

In the United States
 Circuit Court of Appeals
 For the Ninth Circuit.

Standard Packing Company, a corporation,

Appellant,

vs.

Nat Rogan, Individually and as Collector of Internal Revenue for the Sixth District of California; and E. M. Cohee, Individually and as Chief Deputy Collector of Internal Revenue for said Sixth District,

Appellee.

In Equity.

PETITION FOR SUPERSEDEAS AND
 TEMPORARY INJUNCTION.

JOSEPH SMITH,

GEO. M. BRESLIN,

Citizens Nat. Bk. Bldg., 453 S. Spring St., L. A.,

Attorneys for said Petitioner.

SEP 19 1935

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In Equity.

PETITION FOR SUPERSEDEAS AND
TEMPORARY INJUNCTION.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes the Standard Packing Company, a corporation, the appellant herein, and makes its application for supersedeas and temporary injunction, and in support thereof respectfully represents and states to the Court as follows:

I.

That on the 2nd day of July, 1935, said appellant filed in equity in the District Court of the United States,

Southern District of California, Central Division, its bill of complaint and petition for declaratory judgment and injunction, entitled "Standard Packing Company, a corporation, plaintiff, vs. Nat Rogan, Individually and as Collector of Internal Revenue for the Sixth District of California; and E. M. Cohee, Individually and as Chief Deputy Collector of Internal Revenue for said Sixth District, defendants", numbered 698-H in equity in the records of said District Court; that a subpoena or summons was on said day issued out of said District Court, and on that day duly served upon said defendants; that a copy of said bill of complaint and petition is marked "Exhibit A", attached hereto, hereby referred to and by such reference made a part hereof.

That on the 2nd day of July, 1935, the Honorable Harry A. Hollzer, one of the judges of said District Court, upon application therefor, issued an order to show cause and temporary restraining order, directed to said defendant, Nat Rogan, Individually and as Revenue Collector for the Sixth District of California, wherein said defendant was ordered to appear before said District Court at a time and place therein specified to show cause, if any there may be, why the preliminary injunction prayed for in said bill of complaint and petition should not issue, and wherein additionally said defendant Collector was temporarily restrained,

(1) From assessing or attempting to assess against, or collecting or attempting to collect from plaintiff, under

the Agricultural Adjustment Act, mentioned and described in plaintiff's bill of complaint and petition on file herein, the processing tax therein provided to be assessed against and collected from plaintiff on processing of hogs by it, whether such collecting or attempt to collect such tax be by distraint, levy, sale and, or action at law or in equity;

(2) From collecting or attempting to collect said processing tax from said plaintiff in any other manner;

(3) From imposing or filing, or giving notice of intention to impose or file any lien upon the property of plaintiff, whether real or personal, because of the non-payment of said processing tax;

(4) From enforcing or attempting to enforce any penalties against the plaintiff for the nonpayment of said processing tax; and,

(5) From enforcing or attempting to enforce any of the provisions of said Act applicable to plaintiff in relation to said processing tax;

And said order to show cause and restraining order was duly served upon said defendant Collector.

That a copy of said order to show cause and temporary restraining order is marked "Exhibit B", attached hereto, hereby referred to and by such reference made a part hereof.

That on the 12th day of July, 1935, said order to show cause came on for hearing before said District Court and the said judge thereof, together with a motion to dismiss the said bill of complaint and petition, and objections to

the granting of the preliminary injunction, theretofore filed in the cause by said defendant; that after said matters were taken under submission and consideration by the Court said motion to dismiss the bill was by the Court denied, the said objections overruled, and the said preliminary injunction ordered issued; and thereupon, to-wit, on the 31st day of July, 1935, said District Court issued against said defendant Collector in said cause a preliminary injunction, wherein said Court made its findings therein contained, wherein and whereby said defendant Nat Rogan, both individually and as said Collector was enjoined from (1) imposing, levying, assessing, demanding or collecting from plaintiff, or attempting to do so, any processing tax, interest and, or, penalties, now due or thereafter to become due from plaintiff under the said Act, on account of plaintiff's failure to pay the same or any part thereof; (2) imposing or filing, or giving notice of intention to impose or file any lien upon any of plaintiff's property because of a failure to pay said tax, then due or thereafter to become due from plaintiff; (3) levying upon, distraining or selling plaintiff's slaughtering house, packing plant, and its other property therein described, on account of such non-payment of such tax; such preliminary injunction to be in force until the final decree of the court in this case, or until further order of the court.

It was further provided in and by said preliminary injunction that such injunction was granted upon the condition that the plaintiff furnish security to the defendant

Collector by undertaking with sufficient sureties to be approved by the Court in the penal sum of \$25,000.00, conditioned that plaintiff pay all said taxes and costs in the event it is finally decided said preliminary injunction was improperly issued or this action was dismissed; it being provided therein, however, that in lieu of such undertaking, plaintiff should have the option of depositing said sum of \$25,000.00 with the clerk of said District Court, subject to like conditions, and upon the further condition that plaintiff shall continue to file with the defendant Collector monthly returns on all hogs processed by it as required by the Act; that plaintiff exercised the said option given to it and made deposit with said clerk of Court of said sum, subject to said conditions, and in all other respects has observed and performed the said orders of said Court; and that such preliminary injunction remained in full force and effect until the order dissolving the same was made by said District Court, from which order the appeal herein is taken.

That a copy of the minute order granting said preliminary injunction and preliminary injunction are marked "Exhibit C", attached hereto, hereby referred to and by such reference made a part hereof.

II.

That thereafter, to-wit, on or about the 22nd day of August, 1935, said defendant served and filed a motion to vacate the said temporary injunction, in words and figures as follows:

“IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA CEN-
TRAL DIVISION

STANDARD PACKING COM-)	
PANY, a corporation,)	
)	
Plaintiff,)	
)	No. Eq. 698-H
vs.)	
)	
NAT ROGAN, etc., et al,)	
)	
Defendants.)	

MOTION TO VACATE TEMPORARY
INJUNCTION

To the Honorable Paul J. McCormick, Judge of the
Above Entitled Court:

Comes now, Nat Rogan, Collector of Internal Revenue, defendant in the above entitled cause, by Peirson M. Hall, United States Attorney in and for the Southern District of California, and Clyde Thomas, Assistant United States Attorney for said District, his attorneys, and moves the Court to vacate, set aside and dissolve the preliminary injunction entered in this cause, on the 31st day of July, 1935, upon the following grounds and for the following reasons:

I.

That this Court is without jurisdiction to restrain or enjoin the collection of the taxes herein involved, and described in the Bill of Complaint, because:

1. Section 3224 of the Revised Statutes of the United States prohibits the maintaining in any court of a suit for the purpose of restraining the assessment or collection of a Federal tax.

2. The Bill of Complaint sets forth no facts, which, if true, would entitle complainant to the relief prayed for in a court of equity, or to any injunctive relief *pendente lite* in this cause.

3. Complainant has a plain, adequate and complete remedy at law.

II.

That upon the basis of all the records, files and proceedings in the above entitled cause, plaintiff is not entitled to any injunctive relief *pendente lite*.

III.

That since said preliminary injunction was entered, the alleged grounds upon which the same was granted are no longer in existence, in that Congress has enacted H. R. 8492, entitled 'An Act to Amend the Agricultural Adjustment Act, and for other Purposes', approved, which does not contain any provisions denying the right to litigate the legality of processing taxes in actions at law, such as was contained in the bill as originally passed by the House of Representatives, and the basis upon which the injunction herein was granted, but on the contrary the Act makes specific provision for the administrative receipt and consideration of claims for refund of any processing taxes alleged to have been exacted illegally and for suits at law to recover such taxes in the event of administrative rejection of such claims for refund.

IV.

That the plaintiff was guilty of laches in bringing this action in that it paid the processing tax each month for a period of a year and a half prior to the filing of this action without objection or protest or any action whatsoever to stop the collection of said tax, during which time the Government expended or committed itself for a sum in excess of \$1,000,000,-000, and the immediate stopping of the collection of said tax by said injunction will greatly embarrass the Government in its financial arrangements in reference thereto, whereas during the same time plaintiff, together with all persons similarly situated, has adjusted itself and the conduct of its business to the payment of said tax and is now so conducting its affairs.

V.

That since the preliminary injunction was entered herein the Circuit Court of Appeals for the Ninth Circuit has denied an injunction appeal in cases based on similar causes of action to that set out in plaintiff's bill of complaint and that such decision of the said Circuit Court is binding on this Court, so that it is improper for this Court to allow said temporary injunctions to remain in force and effect.

This motion is based upon all the records, files and proceedings in the above entitled cause.

Dated this 22nd day of August, 1935.

PEIRSON M. HALL,
United States Attorney
CLYDE THOMAS,
Assistant U. S. Attorney
Attorneys for Defendant.”

And noticed the hearing thereof before Honorable Paul J. McCormick, one of the Judges of said District Court.

That on the 30th day of August, 1935, and upon the hearing of such motion the said judge of said Court made his minute order vacating said injunction, such minute order being as follows :

“IN THE DISTRICT COURT OF THE UNITED
STATES SOUTHERN DISTRICT OF
CALIFORNIA CENTRAL DIVISION

—————
Honorable PAUL J. McCORMICK, Judge
—————

STANDARD PACKING COM-)
PANY, a corporation,)

Plaintiff,)

) IN EQUITY

vs.)

) No. 698-H

NAT ROGAN, Individually and)
as Collector of Internal Revenue)
for the Sixth District of Califor-)
nia; etc.,)

Defendant.)

MINUTE ORDER ON MOTION TO VACATE
TEMPORARY INJUNCTION

This is a motion to vacate a temporary injunction. The restraining writ in this suit was issued by one of the judges of this court after hearing an argu-

ment before such judge. Similar injunctions have been granted by each of the judges of this court in equity suits by other complainants who seek to enjoin the collection of processing taxes under the Agricultural Adjustment Act, until the respective suits can be heard and decided on the merits.

In each of such pending suits similar motions to vacate the injunction *pendente lite* have been submitted. All have been presented for decision because of the urgency of a ruling in order to preserve the right of appeal within the thirty-day period from the date of the injunction.

It has been considered proper by the court, because of the absence of the other judges during the regular August vacation period of the court, that all of the motions to vacate be disposed of at this time. This order is therefore generally applicable to all pending suits and a like minute order will be entered in each suit respectively.

An event which should be considered has occurred since the interlocutory injunctions were granted: The Ninth Circuit Court of Appeals, in *Fisher Flouring Mills Co. v. Collector, etc.*, decided August 15, 1935, by a divided opinion, in applications for temporary injunctions in aid of pending appeals in that Court from the denial of injunctions by a District Court in the State of Washington in suits like the one at bar, denied the respective appellants such restraint pending appeal.

No principle of judicial administration is more firmly established in the United States than that lower courts must submit to the control of superior judicial tribunals. Notwithstanding the strong dissent by one of the Circuit Judges in the Court of

Appeals, it is our plain duty to follow the majority opinion.

Both opinions indicate that the appellate court was establishing a rule intended to control all applications for temporary injunctions in equity suits brought in this circuit where the suitors seek to restrain the collection of processing taxes under the Agricultural Adjustment Act, and such authoritative control requires the granting of the motion to vacate the preliminary injunction heretofore issued in this suit, and it is so ordered. Exceptions allowed complainant.

Dated:

August 30, 1935.”

And that said plaintiff duly excepted to said order vacating said injunction.

VI.

That on the 14th day of September, 1935, said plaintiff petitioned said Court, addressing the same to said Judge McCormick, to allow an appeal to said Circuit Court of Appeals for the Ninth Circuit, from the said order vacating said injunction, a copy thereof being marked “Exhibit D” attached hereto and by reference made a part hereof.

And that said petition was accompanied by plaintiff’s assignment of errors herein, a copy of which is marked “Exhibit E”, attached hereto, hereby referred to and by such reference made a part hereof.

That on said day said Court, through and by said Judge McCormick, made its order allowing said appeal, and that a true copy of said order is marked “Exhibit F”, attached hereto, hereby referred to and by such reference made a part hereof.

And that said Court issued its citation on appeal in the manner and form required by law.

That all of the foregoing papers on appeal were duly served upon the attorneys for defendants and filed with the clerk of said District Court, as well as did plaintiff file with the clerk a praecipe for transcript of all of the papers necessary on this appeal, therein naming them, and gave defendants' attorneys notice thereof; that the printing of said record on appeal is now being had under the order of said clerk; that by the order allowing said appeal said court fixed the bond on appeal at the sum of \$250.00, and such bond has been furnished, approved by the Court, and filed in said cause.

VII.

That prior to presenting its said petition for appeal herein, said plaintiff, after giving proper notice of its application for leave so to do, and after obtaining leave of court to file in said cause its supplement to its bill of complaint and petition for declaratory judgment and injunction, and to each of the counts thereof, filed herein its supplement thereto; and that a copy of such supplement is marked "Exhibit G", attached hereto, hereby referred to and by such reference made a part hereof.

VIII.

That among other allegations found in said bill of complaint and petition for declaratory judgment and injunction, it is alleged and shown in substance as follows:

In First Cause of Action therein:

Paragraph I. That the plaintiff is a corporation, organized under the laws of the state of California, with its office and place of business in Vernon, Los Angeles county,

and that its business is, among other things, that of slaughtering hogs and packing, curing and selling pork and all hog products.

Paragraph II. That defendant Nat Rogan is the collector of Internal Revenue for the Sixth District of California, etc.

Paragraph III. Defines the boundaries of the Sixth Collection District.

Paragraph IV. That the matter in controversy exceeds \$3000.00 exclusive of interest and costs, and exists and arises under the constitution and laws of the United States of America.

Paragraph V. That the plaintiff has been engaged for nearly twenty-two years in pork packing and has developed a valuable trade and good will; that plaintiff has not been and is not engaged in any degree in interstate commerce; that its business does not obstruct or interfere with interstate commerce.

Paragraph VI. That the Agricultural Adjustment Act was adopted May 12, 1933 and that copies of the relevant sections are set forth as an exhibit to the bill of complaint.

That the Act provides for the assessment of a processing tax in accordance with a formula therein contained, by the Secretary of Agriculture, and that he is to determine the measure or amount of such tax, determine the circumstances under which the tax becomes payable; and that under the Act processing taxes have been assessed against plaintiff in ruinous amounts; and that the Secretary of Agriculture has, since January 1, 1935, ignored the formula, and has assessed and is continuing to assess such tax in disregard of such Act; that the tax is illegal

and void; that the tax is in violation of the Constitution of the United States; and that the plaintiff being threatened with ruinous penalties for non-payment of the tax and the destruction of its business and good will, seeks the relief in equity prayed for.

Paragraph VII. That although the provisions of the Act apply to a variety of commodities, including hogs, the complaint deals only with one commodity, to-wit, hogs; that the object of the Congress, as declared in the Act is the restoration of a pre-war standard of values of hogs in terms of power to purchase such articles as farmers buy, through the control of the productions of hogs and the resultant scarcity thereof; and to obtain the consent of the producer of hogs to make such reduction, such sums of money are paid to him to justify his foregoing normal production.

That in order to acquire this money paid to not only the producer of hogs, but to producers of all other commodities, who enter into such reduction agreements, the Secretary of Agriculture levies and collects from the processors of those commodities, including plaintiff in the processing of hogs, the aforesaid processing tax;

That the statutory formula for determining the rate of tax shall be the difference between the current average farm price for hogs and their fair exchange value determined as above; and that this tax is levied on the live weight of the hog; and that neither the levy of the tax nor the determination of the amount bear any relation to the actual processing of the hogs;

That the Secretary has power to bring under the Act other commodities not named in the Act;

That the Act places in the hands of the Secretary of Agriculture effective and complete control not only of the production of all agricultural commodities and the price for which they are to be sold, but to give him equal control over the private business of those handling those commodities; and that the defendant Collector will continue to levy and collect said processing tax until and unless the Act is adjudged unconstitutional or until he is enjoined from such collection.

Paragraph VIII. That under the terms of the Act, the Secretary of Agriculture proclaimed a processing tax on hogs to become effective November 5, 1933, at a rate then fixed; and that in March, 1934, the rate was increased and fixed at \$2.25 per hundredweight, live weight, and such rate remained thereafter unchanged.

Paragraph IX. That under the Act processing taxes are assessed and collected on the first domestic processing of hogs and are required to be paid by the processor; that it is required by the Act to pay to the Collector of said District monthly the said processing tax with respect to all hogs slaughtered by it.

That during all of the times mentioned in the complaint plaintiff has been engaged in the business generally of slaughtering animals, including hogs, and selling the same for human consumption, and as a part of such business in preparing, manufacturing the meat and meat products therefrom; that said plaintiff is the owner of a large slaughtering house and packing house located in the city of Venon, Los Angeles county, California, equipped with costly machinery and appliances for the successful carrying on of its business; and that all of the said business is entirely carried on and the transportation and sale

of all said meat and meat products are transported and sold by it wholly within the boundaries of the said state of California, and it does not in anywise obstruct or interfere with interstate commerce.

Paragraph X. That since the 5th day of November, 1933, there has been levied and assessed on hogs processed by plaintiff said tax, and in addition to the illegal and unwarranted collection of said tax from said plaintiff, said plaintiff has been directly, oppressively and ruinously affected by such assessment and collection of the tax.

That during the year 1934 plaintiff suffered a loss in the operation of its pork department of about \$6,208.00, taking into consideration the cost of materials and the fixed operating expenses; while for the first five months of the year 1935, said loss was the sum of \$10,496.62 on a like basis; that such loss is directly due to the collection and levying of said processing tax.

That prior to the levy of said tax, plaintiff was able over a long period of years to operate its said pork business on a satisfactory basis, but since the advent and collection of said taxes, plaintiff has suffered large losses in its said pork packing business, and in fact during such time plaintiff could not have continued in such business, excepting that the departments of plaintiff's meat packing business other than the pork department have absorbed such loss to such extent that plaintiff has been enabled to continue to carry on its said pork packing business.

That there has been levied and paid by said plaintiff from November, 1933, to and including February, 1935, taxes in the total sum of \$97,092.79; and that the tax levied against plaintiff in terms of percentage to the sales of pork made by plaintiff during said time was 22.78%

for the year 1934 and 17.85% for the first five months of 1935; and that said plaintiff cannot make such payments and continue to carry on its business.

That inasmuch as plaintiff cannot control the retail prices of pork and the retailers of such commodity have been unable to raise the retail price thereof to such level that plaintiff is enabled to pass the amount of such tax on to the consumer, said plaintiff is compelled to bear the loss of that portion of the tax not absorbed by the consumer, which is considerable, and such loss is irreparable to plaintiff, said plaintiff having no way to recover the same.

Paragraph XI. That for the months of March, April and May, 1935, there has been assessed against plaintiff the total sum of \$19,335.41, and that this tax has not been paid for the reason so to do would create in said pork packing business a further and additional loss to the extent and amount of such tax; and that any attempt to collect such tax, or any part thereof, is illegal and beyond the power of the Collector of Internal Revenue so to do; that such assessment and collection of said taxes will continue in the future; and that such further taxes cannot and will not be paid by plaintiff for the foregoing reasons.

Paragraph XII. That the failure of plaintiff to pay said processing taxes when due will result in the imposition by the Collector of Internal Revenue of the penalties against plaintiff

- (a) Interest at the rate of one per cent per month;
- (b) Five per cent of the total amount of the tax on failure to pay within ten days after demand, and the tax

and this penalty bear interest thereafter at the rate of one per cent per month;

(c) After a second ten days notice if the tax, etc., be not so paid the Collector may distrain the plaintiff's slaughtering house and plant, together with its other property in order to realize the amount of its tax, etc.;

(d) Section 19, subsection (b) of the Act subjects plaintiff to a fine of \$10,000.00 or imprisonment or both, with costs of prosecution, and in which event the tax is doubled.

That repeated levies upon the said property of plaintiff from month to month will cause plaintiff irreparable loss and damage in that such proceeding will impair the valuable good will of its business built up since its incorporation, and will seriously interfere with if not prevent the actual operation of its plant, and the sale of its products, and will result in a permanent injury to its business and good will in excess of \$200,000.00, and if the Collector of Internal Revenue should from month to month sell such property under such distraint the whole thereof and the good will of the business will become wholly lost to plaintiff.

That unless defendants are enjoined and restrained by order of the Court, they will assess said taxes against plaintiff and impose said penalties upon it for the non-payment of the tax, collect such tax now or hereafter due, whether by distraint, action in law or in equity, impose liens on plaintiff's property, sell said property in collection of the tax, and thereby wholly take from plaintiff its property and good will, and unless defendants are restrained and until hearing hereof temporarily enjoined, they will

proceed against plaintiff as above even though this Court shall have declared such tax to be illegal and thereby render valueless to plaintiff such declaratory judgment.

Paragraph XIII. That the said tax levied for the months of March, April and May, 1935, is invalid and void in that the rate of such tax has been fixed by the Secretary of Agriculture in complete disregard to the formula under the Act; that the rate of the assessment of said tax for those months was \$2.25 per hundred-weight live weight of hogs, and under the formula it should have been for March \$1.14, and for April \$1.36; and that the excess of pre-war parity over the actual current price was even less for the month of May, and that the tax for these months is greatly in excess of the difference between the average current farm price and the fair exchange value for hogs for the taxable period in question, and that for that reason the tax levied for those months is arbitrary, capricious, oppressive and in disregard of the standards prescribed by the Act, and consequently these taxes are void and uncollectible.

Paragraph XIV. That the processing tax is unconstitutional for the following reasons:

(a) The scheme of local production-control set up by the Agricultural Adjustment Act is not within any of the powers conferred upon Congress by the Constitution of the United States; and if it is the exercise of any governmental power, it is of a power reserved to the states under the tenth amendment to said Constitution; that the declared policy of such Act is to limit production of farm products, to raise the price of such products, and to fix prices at an arbitrary level which will give the farmer the same purchasing power for his products or their fair exchange

value as they presumably had in the period 1909-1914; that the power thus to control production is nowhere expressly or impliedly granted to Congress by the Constitution; that the processing tax is not a revenue measure but an integral part of a scheme to accomplish an unconstitutional purpose; and that the tax goes into effect only when benefit or rental payments are found necessary by the Secretary of Agriculture, and automatically ceases when farm prices reach the level fixed by the Act.

(b) The processing tax (considered apart from the scheme for production control) is not within the power granted to Congress by article I, section 8, of the Constitution of the United States "to lay and collect taxes, duties, imposts and excises"; and is in violation of the fifth amendment to the Constitution in that it takes property without due process of law; that it is not a tax within the meaning of the Constitution; that it is merely an invalid means to accomplish an illegal end; that the proceeds of such tax are not levied for general revenue or for a public purpose, but on the contrary, the exaction is an arbitrary levy upon one class of citizens for the benefit of another class; that the rate of tax bears no reasonable relation to the property taxed, and is not based upon the amount of property involved or the amount of business done, but upon purely arbitrary and unrelated factors having to do only with the purchasing power of the proceeds derived from the sale of farm products; that these factors in turn are constantly variable, uncertain and impossible of exact determination; and the rate of tax is consequently indefinite and shifting; that the exaction is neither a tax on property nor a tax upon sales; and that

the rate is exorbitant, confiscatory and destructive of lawful business.

(c) Assuming the tax to be otherwise valid, the power granted by the Act to the Secretary of Agriculture to determine and levy the processing tax involves an invalid delegation by Congress of its power to tax; for the Secretary of Agriculture alone determines at his own discretion the particular commodity to be taxed, when the tax is to be levied, what the rate of the tax shall be, when the tax shall begin, and when the tax is to cease; and that this is in violation of article I, section 1 of the Constitution aforesaid, as well as article I, section 8, paragraph 18 thereof.

(d) And lastly, the Act is violative of the fifth amendment to said Constitution, in that said Act interferes with and attempts to regulate intrastate commerce and to control and regulate wholly domestic affairs of the states respectively.

Paragraph XV. That an actual controversy exists over said Agricultural Adjustment Act between the parties hereto and of what it consists.

That said tax represents a continuing drain on the assets of plaintiff which it cannot meet and stay in business; that although requested the Collector has refused extension of time for the payment of the tax; and that plaintiff has exhausted all effort of obtaining any consideration or relief from defendants, and they will proceed to collect the tax, will subject all of plaintiff's property to lien and distraint preventing the sale by plaintiff of any thereof, and will sell the property and destroy the business and good will of plaintiff; and that for these reasons it is necessary that the controversy be determined between the parties.

Paragraph XVI. That plaintiff is in need of immediate equitable relief; that it has no adequate remedy at law and will suffer immediate, permanent and irreparable injury and damage unless the relief prayed for is granted.

That the plaintiff has not the resources to pay the taxes each month and thereupon bring its action to recover each installment, even if such remedy is technically available to it; that not only would there be involved a multiplicity of suits, but the delay incident to the termination of such actions at law would prove an effective deterrent because of the financial impossibility of making such payments, as well as is there grave doubt that any judgment obtained in such suit would ever be paid to plaintiff.

Paragraph XVII. That even if plaintiff should be successful in obtaining a final judgment or judgments in its favor for the recovery of such refund of such taxes, such judgment would be wholly and effectually nullified by the Congress failing and refusing to make the necessary appropriations to pay the same.

There is then alleged the threat of Congress to preclude plaintiff from bringing any action under the amendments to the Act then before the House.

In Second Cause of Action therein:

The second cause of action being for injunctive relief only contains in effect the same allegations as contained in the first cause of action, with certain other allegations, among which are the following contained in paragraph

XIX of said second cause of action, showing the following additional grounds and reasons for the injunction, to-wit:

(a) That irreparable loss and damage will result to plaintiff;

(b) That plaintiff would necessarily be compelled to bring a multiplicity of suits for refund;

(c) That plaintiff has no remedy at law.

And the plaintiff therein offers to do all equity.

All followed by the prayer of the complaint for declaratory judgment, for temporary restraining order and preliminary injunction pending the determination of the suit.

IX.

That the said supplement to the bill of complaint, etc., attached hereto as an exhibit deals with those facts arising since the filing of the original bill of complaint herein, including the fact of the adoption of the amendments to the Act on August 24, 1935.

Since the supplement is concise petitioner suggests that nothing is to be gained by attempting to set out here generally the substance of the supplement, but that the supplement itself may be referred to for all of its contents.

X.

Your petitioner further represents that although in its petition to the District Court for Appeal from said order vacating injunction, said plaintiff prayed for the issuance by said Court of a supersedeas staying the dissolution of said preliminary injunction pending appeal and for the

restoration of such injunction during that period, the Honorable Judge of that Court in relation thereto made the following order:

“In view of the recent action of said Circuit Court of Appeals for the Ninth Circuit in the matter of petitions submitted to it for the granting of injunctions pending appeal to such Circuit Court in other causes involving processing taxes under the Act of Congress popularly known as Agricultural Adjustment Act, it is the expression of this Court that any relief in the form of supersedeas, whereby the preliminary injunction so dissolved by order of this Court be restored to full force and effect during the pendency of this appeal, should be sought by plaintiff by application to the United States Circuit Court of Appeals for the Ninth Circuit for injunction pending appeal, if the plaintiff desires so to do.”

The plaintiff, believing that it is justly entitled to restoration of said preliminary injunction, vacated by the order from which the appeal herein is taken, and that pending this appeal a supersedeas should be issued by this Honorable Court in effect restoring the force of said preliminary injunction, here presents and urges the following grounds and reasons for the relief sought by this petition:

(a) That, even if the Agricultural Adjustment Act, as amended, affords plaintiff the remedy by action at law for recovering refunds of processing taxes paid by plaintiff, yet plaintiff would be forced into bringing a great number of such suits for refund of such taxes paid, for the reason such taxes are to be paid monthly, thus creating a cause of action in plaintiff's favor each month such tax is paid; and furthermore, for the reason that under the Act

the plaintiff is precluded from commencing its action for refund until after the expiration of one year from the time it has filed its claim for refund for such monthly tax paid with the Commissioner of Internal Revenue, and there is legal possibility, if not probability, that during at least the first year of plaintiff's operations under the Act, as amended, plaintiff will be compelled to pay at least twelve monthly payments of said illegal taxes without authority to seek, during that time, a refund of any of the said taxes paid during that time; thus casting upon plaintiff a financial burden greater than it is and will be able to bear.

(b) That if said plaintiff does not pay said illegal taxes and injunctive relief is not afforded herein, then under said Amended Agricultural Adjustment Act, and the Revenue laws of the United States, including the regulations promulgated by the Secretary of the Treasury, said Collector for the Sixth District of California, his deputies and agents, may and will monthly levy upon, distrain and seize and sell the slaughtering house, packing plant, stock on hand, merchandise and other property of plaintiff in collection of such taxes; and that every such distraint and seizure will result in a separate and different trespass against plaintiff's property, and will constitute various and different breaches of the peace; thus causing to exist in plaintiff's favor an action for damage for each trespass and or breach of the peace aforesaid, and thus engendering a multiplicity of suits.

(c) Under the provisions of the Act, the defendant Collector of Internal Revenue is empowered to file and cast liens upon the real property of plaintiff for unpaid taxes; and, unless restrained from so doing, he will file

and create liens monthly on said property for and up to the amount of the unpaid taxes payable by plaintiff.

(d) That subsection (d) (1) of section 21 of the Act as amended provides that no recovery shall be made or allowed of any amount of the tax paid unless, after a claim has been filed, it shall be established to the satisfaction of the Commissioner of Internal Revenue that the claimant has not directly or indirectly included such amount in the price of the article processed from the commodity with respect to which it was imposed, *or has not passed on any part of such amount to the vendee or to any other person in any manner.* This act being reasonably susceptible of the construction that if it should be determined that the plaintiff passed on any part of the tax to the consumer or to anyone it is wholly precluded from a recovery of the tax paid, or any portion thereof.

Consequently, injunctive relief should be given to plaintiff for the reasons, the Act in the above respects is so dubious, unfounded and uncertain, that until the constitutionality of the Act is finally determined it is unjust and inequitable to compel plaintiff to pay a tax which obviously is invalid, and when thereafter probably plaintiff is provided no remedy at law for its recovery.

(e) The Act provides for the exaction from the plaintiff of inequitable, unreasonable and extraordinary penalties, including enormous interest, a penalty equal to the amount of the tax unpaid, and for each wilfull refusal to pay said tax, the plaintiff is made subject to a fine of \$10,000.00 for each violation in that respect, and its officers participating in such refusal are also subject to such fine and imprisonment, or both, for each violation; and besides which the property of plaintiff can be seized and

sold by the Collector for the tax, thus not only depriving plaintiff of its liberty, but irreparably destroying to it its property, business and good will.

(f) That plaintiff is given and has no plain, adequate and complete remedy at law for the recovery of any of such illegal processing taxes paid by it, for the reasons, among others, as follows:

The Act as amended in terms denies to plaintiff the right to obtain declaratory relief under the Declaratory Judgments Act heretofore enacted by the Congress of the United States and signed by the President.

The Act as amended by its terms provides that the plaintiff cannot bring or maintain any action for the purpose of recovering any of said illegal processing taxes paid by plaintiff, if any part of the tax has been deducted from the price paid by plaintiff for the hogs purchased or added to the price received by the plaintiff for the products processed from such hogs, even though the amount so deducted or passed on is but a small part of the total tax.

(g) That if plaintiff does not pay said taxes, or any portion thereof, when payable, doubtless the said Collector of Internal Revenue will distrain, seize and sell, from month to month, the property of plaintiff, consisting of a large amount, thus placing it beyond the power of plaintiff to recover the value of such property, and the value of its business and good will incidentally destroyed.

(h) There is no appropriation of funds by Congress now available, or now provided to be available in the future, sufficient in amount to permit the refund to the plaintiff, and other processors, of processing taxes in the

event such taxes should hereafter be paid and the Act as amended is declared invalid.

(i) Section 21 of the Act as amended purports to allow the recovery of processing taxes illegally collected upon compliance with certain conditions therein mentioned; but the meaning and interest of such conditions are so uncertain, vague and ambiguous and so impossible of proof and determination, that no plain, adequate and complete remedy is furnished.

Even if plaintiff should be permitted under said section 21 to maintain a claim for refund although it has passed on some portion, less than the whole, of said tax, plaintiff would be compelled to proceed under subsection (d) of that section, which provides in effect that plaintiff will be precluded from securing refunds of any taxes heretofore or hereafter paid by it, even though such taxes are unconstitutional or invalid, unless the plaintiff establishes that it has not passed on the tax to the purchaser of the various products into which the hogs have been processed. Since it is and will be impracticable and impossible to allocate the proportional part of said processing tax assessed on the live weight of hogs to the various products resulting from such processing thereof, and to follow through and to allocate back the sale price to each of such products; for the reasons, among others, the hogs purchased by plaintiff are acquired at different times and under varying conditions and fluctuating prices and when the hogs are from time to time processed many and various products result therefrom commanding various sale prices; these products from hogs so purchased at various times aforesaid are of necessity comingled and stored together until sale thereof, and when sales are made from time to time there may be

and are included in each sale a varying and miscellaneous number of products from hogs thus purchased at different times; there is no method known to earmark each product and the products being marketed at different times and at greatly varied prices, it is consequently factually impossible to determine the sale price of the products of any one dressed hog as a whole.

In further support of the statements above made, we refer to the allegations of the said supplemental bill of complaint attached hereto as an exhibit, especially to paragraph VII *et seq* thereof.

(j) The meaning, purport and intent of said conditions are so uncertain, vague and ambiguous as to be legally and factually impossible to determine what portion, if any, of said tax has been passed on.

XI.

Plaintiff further represents that between the time the order granting the preliminary injunction was made and the injunction issued, and the time when such injunction was ordered dissolved, there has been no change in the facts or circumstances requiring the dissolution of said preliminary injunction;—but on the contrary the said amendments to said Agricultural Adjustment Act adopted after the issuance of said injunction and the dissolution thereof, only adds to the factual reasons and the legal principles supporting the order authorizing the injunction and the findings of the Court in that behalf. Reference is hereby had and made to said amendments to said Act for all the provisions thereof.

XII.

That in the minute order of said District Court granting the preliminary injunction, and by the terms of the preliminary injunction itself, it was provided to the effect that, as a condition for the issuance of said preliminary injunction, plaintiff should furnish security to the defendants by undertaking in the penal sum of \$25,000.00, conditioned that plaintiff would pay all said processing taxes assessed and charged against plaintiff under said Act, together with all costs assessed by the Court, in the event it is finally decided the restraining order was improperly issued or this action is dismissed, it being provided therein, however, that in lieu of such undertaking plaintiff was given the option of depositing such sum in lawful money with the clerk of the above entitled Court, subject to like conditions. Within a few days thereafter said plaintiff did deposit with the clerk of said District Court the said sum of \$25,000.00 in lawful money of the United States, and this money was so deposited with the understanding and under the agreement that in no event should it be paid over to said Collector of Internal Revenue until it should be finally decided that such restraining order was improperly issued or plaintiff's action herein dismissed. Notwithstanding the foregoing, on the 12th day of September, 1935, Honorable Paul J. McCormick, judge of said District Court, before whom the petition for rehearing on the motion vacating the injunction was had, ordered from the bench, in effect, that the Court would grant a motion of the defendants at any time after September 23, 1935, without notice ordering paid over to the defendant Collector all monies deposited with the clerk at the time of the granting of the preliminary injunction.

Plaintiff has been informed by counsel and believes and therefore represents that unless a restraining order is granted herein or other equitable relief given to said plaintiff that said money so deposited by it will be paid over to said defendant Collector in violation of the order of said District Court contained in said order granting said preliminary injunction and in the preliminary injunction itself, because of which said plaintiff will be irreparably injured in the premises.

XIII.

Plaintiff alleges that it is ready and willing to give and hereby tenders any bond or security that may be required by the order of this Court.

XIV.

Plaintiff further represents that since in the final disposition of the causes set forth in the bill of complaint it will be necessary to determine important questions on the issues arising therein and on which depend the right to the relief prayed for, and the preliminary injunction having been properly granted and issued in the first instance on findings of fact amply supporting the issuance thereof, and no fact or circumstance having been shown to have occurred subsequent thereto rendering its dissolution proper, the injunction should continue in force until the final decree herein.

XV.

Your petitioner further represents that the said Agricultural Adjustment Act as amended is unconstitutional and unenforceable for the reasons alleged and shown in its original bill of complaint and petition for declaratory

relief and injunction and in the supplement thereto, all of which are attached hereto as exhibits, and to which reference is hereby had and made for those particulars.

XVI.

Your petitioner further represents that the dissolution of said preliminary injunction will cause to said petitioner great and irreparable loss and damage as herein shown.

Wherefore, petitioner prays that a supersedeas herein be granted by this Honorable Court superseding the execution of the said order made by said District Court vacating said preliminary injunction; and that a temporary restraining order be granted herein against said defendant, Nat Rogan, individually and as Collector of said Sixth District of California, similar in terms and effect as the said preliminary injunction vacated, as aforesaid; and that petitioner may have all other and further proper and necessary relief in the premises.

Dated, September, 1935.

STANDARD PACKING COMPANY,

By

(Corporate Seal)

President.

JOSEPH SMITH,

GEO. M. BRESLIN,

Attorneys for said Petitioner.

State of California, County of Los Angeles.—ss.

T. P. BRESLIN being first duly sworn according to law deposes and says: That he is the president of the Standard Packing Company, a corporation, the petitioner named in the foregoing Petition for Supersedeas and Temporary Injunction; that he has read said Petition and knows the contents thereof, and that the statements made therein are true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true; and that he is authorized to make and does make this verification for and on behalf of said corporation.

Subscribed and sworn to before me this day of
September, 1935.

*Notary Public in and for the County of
Los Angeles, State of California.*

[EXHIBIT A.]

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION.

STANDARD PACKING COM-)
PANY, a corporation,)
) NO. Eq. 698-H
Plaintiff,) IN EQUITY
)
vs.) BILL OF
) COMPLAINT
) AND PETITION
NAT ROGAN, Individually and) FOR
as Collector of Internal Revenue) DECLARATORY
for the Sixth District of Califor-) JUDGMENT
nia; and E. M. COHEE, Indi-) AND
vidually and as Chief Deputy Col-) INJUNCTION.
lector of Internal Revenue for said)
Sixth District,)
)
Defendants.)

The plaintiff, Standard Packing Company, a corporation, brings its bill of complaint against the defendants, Nat Rogan, individually and as Collector of Internal Revenue for the Sixth District of California; and E. M. Cohee, individually and as Chief Deputy Collector of Internal Revenue for said Sixth District, and complains and represents:

I.

That plaintiff is a corporation incorporated, organized and existing under the laws of the State of California,

and was so incorporated on the 28th day of September, 1913; that it was incorporated for the purpose, among other things, of slaughtering hogs and of packing, curing and selling pork and all hog products; that such corporation is a citizen of the State of California, and has its principal office and place of business in the City of Vernon, County of Los Angeles, State of California, and in the said Sixth District of California.

II.

That said defendant, Nat Rogan, is the duly appointed, qualified and acting Collector of Internal Revenue of and for the said Sixth District of California; and that said Nat Rogan is a citizen of the United States and of the State of California, and resides in the City of Los Angeles, State of California, and in the Sixth Collection District.

That said defendant, E. M. Cohee, was for many months prior to the 1st day of July, 1935, the Acting Collector of Internal Revenue of and for the Sixth District of California, and as such was duly appointed and qualified to perform the duties of that office; that he is now the Chief Deputy Collector of Internal Revenue of said District; and that he resides in the City of Los Angeles, County of Los Angeles, State of California, and in the said Sixth Collection District, and is a citizen of the United States and of the said State of California; and that such deputy is frequently in charge of the matter of collecting said revenue in said District in the temporary absence of the Collector.

That it is the duty of said Nat Rogan, as said Collector for said District to collect or attempt to collect in such

District all internal revenue payable therein, including all taxes, fines and penalties assessed against this plaintiff under the Agricultural Adjustment Act, hereinafter referred to, upon the hogs processed by plaintiff as defined in such Act; and that it is the duty of said E. M. Cohee to make collection of such revenue in the absence of said Nat Rogan, said Collector.

III.

That the said Sixth District was heretofore by law established as a subdivision of the United States for the purpose of the convenient collecting of taxes provided by the Internal Revenue law of such United States, and comprises and embraces the whole of that part of California lying south of a line constituting the north boundary lines of San Luis Obispo, Kern and San Bernardino Counties in said State of California.

IV.

That the matter in controversy exceeds in value the sum of \$3,000.00, exclusive of interest and costs, and such matter and the controversy in relation thereto exist and arise under the Constitution and laws of the United States, of America, the relevant portions of which are hereinafter set forth and referred to.

V.

That for nearly twenty-two years last past plaintiff has been continually and actively engaged in the purchase, slaughter and processing of hogs and the sale of pork and hog products to retailers; and in the course of its business has developed and maintained a substantial and valuable trade and good will; and that said plaintiff at none of the times herein mentioned was engaged, nor is it

now engaged, in interstate commerce in any degree in the operation of its said business, nor does the carrying on of its said business in anywise obstruct or interfere with interstate commerce; that at all of the times herein mentioned said plaintiff, in the carrying on of its said business, slaughtered and processed and now slaughters and processes hogs only in the State of California, to-wit, in the said City of Vernon, and during such times transported and sold, and now transports and sells, the resulting pork and other products only within the boundaries of the said State of California, and not elsewhere.

VI.

That on May 12, 1933, the President of the United States approved PL #10 of the 73rd Congress of the United States (HR3835), known as the Agricultural Adjustment Act, 48 U. S. Stat. at Large, Part I, pp. 31, et seq., which said Act was thereafter amended June 16, 1933; April 7, 1934; May 9, 1934; May 25, 1934; June 16, 1934; June 19, 1934; June 26, 1934; June 28, 1934; and March 18, 1935, the same being Title I, Chapter 26, Act of May 12, 1933, U. S. C. A. Title 7, Chapter 26, Sections 601 to 619, inclusive; that copies of the relevant sections and portions thereof are set forth in "Exhibit A", hereto attached and hereby referred to, and by such reference made a part hereof; and that the said Agricultural Adjustment Act is hereinafter, for the sake of brevity, sometimes referred to as the Act.

That the Act provides for the assessment and collection of what is styled in the Act a "tax", prescribes a formula by which the Secretary of Agriculture, a member of the Cabinet of the President of the United States, is to determine the measure or amount of such tax, and to specify

and determine the circumstances under which the tax becomes payable; that under this Act taxes have been assessed against the plaintiff in ruinous amounts and large sums have been paid by plaintiff on account, all as hereinafter specified in exact detail; that plaintiff charges, as hereinafter more particularly averred, that the Secretary of Agriculture ever since the 1st day of January, 1935, has ignored the formula specified in the Act in assessing the tax, and since said last mentioned date has assessed said tax and threatens to continue so to do in total disregard of the fact that the statutory conditions precedent to such assessment have ceased to exist; that plaintiff further charges, on the grounds hereinafter set forth, that, even if assessed as prescribed by the Act, the so-called tax is wholly illegal and void because the assessment thereof and the tax itself are in violation of the Constitution of the United States; and that plaintiff, being threatened with ruinous penalties for non-payment of said tax heretofore assessed under the Act against it and remaining unpaid, and being threatened with proceedings for the collection of said tax and penalties in a manner and to the extent that will wholly destroy the said business and good will of plaintiff, as hereinafter more particularly shown, and being without any adequate remedy at law, seeks the equitable relief herein prayed for.

VII.

That the provisions of said Act are applicable to hogs and a variety of other commodities; but for the sake of simplicity the provisions of the Act and the Act itself are herein analyzed as if it applied to and included only hogs.

That the objective of the Congress, as declared in the Act, is the restoration of a pre-war standard of value of

hogs in terms of power to purchase such articles as farmers buy; that this objective is sought to be obtained by a plan and scheme so to control the production of hogs as to raise their market price to the level at which the producer thereof will receive enough purchase money to enable him to buy, at current prices, as many of the said articles which farmers buy as, in the pre-war period, he would have been able to obtain by the sale of the same number of hogs.

That the nature of the control contemplated by the Act is to reduce production of hogs by the farmer to a point at which scarcity will result in a rise in the market price thereof, or otherwise to withdraw from the market hogs already produced, to the extent necessary to prevent the price from going down; that, however, instead of a direct statutory prohibition upon production, the scheme of the Act is to pay to the producer sums of money ample to deter him from production, thus substituting a pecuniary inducement to curtail production more potent and effective than an easily evaded prohibition.

That in order to acquire and raise the money necessary and required to make the aforesaid control of production effective, the Act directs the said Secretary of Agriculture to assess and levy on those slaughtering and processing hogs, and the resulting funds are then to be paid to the producers in the form of consideration or compensation for the theoretical losses sustained by the producer by and through the aforesaid resultant non-production.

That the statutory formula, contained in the Act, for determining the amount of the tax is that it is to be at such rate as equals the difference between the current average farm price for hogs and their fair exchange value

determined as above averred; and the Secretary of Agriculture is empowered to make the necessary findings of fact to effectuate the formula; that the tax is to be assessed against and collected from those processors, including the plaintiff, who buy hogs from the farmer and slaughter them for market; and that the slaughtering of the hog is defined by the act as “processing” and the tax is styled a “processing tax” but neither in fact nor in theory does the levy of the tax nor the determination of its amount bear any relation whatever to processing, but it appears to be so styled merely to identify who the citizens are who must pay the tax in order to raise the price to them of the hogs which the taxpayers buy.

That the scheme of the Act is not, however, confined to a reduction in the production of hogs; but the Act specifies a number of so-called basic agricultural commodities, all of which are subject to the same drastic regulations above described; that, in addition, the Secretary of Agriculture is given power to determine if the processing tax as levied upon the commodities specified in the Act and its amendments is causing or “will cause” a disadvantage to such commodities by reason of competition with any other commodities, or the products thereof; and if he finds such to be the case, he is empowered to proclaim such determination and a “compensatory tax” is thereafter to be levied upon such competing commodity or commodities, or the products thereof, at a rate to be determined and proclaimed by the Secretary of Agriculture; and that finally the Secretary is given power to license processors, associations of producers and others “to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing

commodity or product thereof"; that he may suspend or revoke any such license for violations of the terms or conditions; and any person engaged in such handling without a license as required by the Secretary is declared subject to a fine of not more than \$1,000.00 for each day during which the violation continues.

That the dominant plan and scheme of the act as expressed therein is therefore to put in the hands of the Secretary of Agriculture effective and absolute control not only of the production of all agricultural commodities and the prices for which they are to be sold, but to give him equal control over the private business of all those who handle such commodities or their products, or any other products that may conceivably be deemed by him to be competitive.

And that according to its terms, the Act shall continue in its operation and in force and effect until such time as the President of the United States finds and proclaims that the National Economic Emergency, mentioned in the Act as the reason for the adoption thereof, has terminated and ended; that, however, such finding has not been made, and consequently said Act is yet effective and in force, and the said Collector of Internal Revenue for the Sixth Collection District is continuing and will in the future continue to collect, or attempt to collect said processing tax and otherwise execute the duties assigned to him under the Act, until and unless the Act is by decree of Court having jurisdiction thereof, adjudged to be unconstitutional and illegal, or until such Collector is enjoined by such Court from all such execution of the terms of said Act.

VIII.

That by virtue of the supposed authority conferred upon him by the Act, the Secretary of Agriculture determined and proclaimed a processing tax on hogs, to become effective as of November 5, 1933, at a rate of fifty cents per hundredweight, live weight; and that the said rate of tax was subsequently increased as follows, to-wit, in December, 1933, to \$1.00 per hundredweight, live weight; in February 1934, to \$1.50 per hundredweight, live weight; and in March, 1934, to \$2.25 per hundredweight, live weight; and that such rate of said tax has ever since been and now is in effect.

IX.

That under the Act said processing taxes are assessed and collected on the first domestic processing of the commodities, including hogs, and are required to be paid by the processor; that, as hereinbefore shown, plaintiff has been at all of the times herein mentioned and now is a processor of hogs as defined by the Act, and is required by the Act to pay to the Collector of said District monthly the said processing tax so fixed, determined and proclaimed by said Secretary of Agriculture with respect to all hogs slaughtered by it.

That at and during all the times herein said plaintiff has been and now is engaged in the business generally of slaughtering animals, including said hogs, and selling the same for human consumption, and as a part of such business, in preparing and manufacturing the meat and meat products therefrom; that said plaintiff has

been at all said times and now is the owner of a large slaughtering house and packing house located in said City of Vernon, equipped with costly machinery and appliances for the successful carrying on and maintenance of said business, including the transportation and sale of said meat and meat products; but that all said business is entirely carried on, and the transportation and sale of all said meat and meat products are so transported and sold by it, only within the boundaries of the said State of California, and not in anywise in interstate commerce: nor does such business, transportation and sale in any degree obstruct or interfere with interstate commerce.

X.

That, therefore, such tax on the processing of hogs has been since the said 5th day of November, 1933, levied and assessed on all hogs processed by plaintiff during that time, and is now being so levied and assessed on all the hogs processed by plaintiff within the terms of the Act; that in addition to the illegal and unwarranted collection of said tax from plaintiff, said plaintiff has been and is continuing to be directly, oppressively and ruinously affected by such assessment and collection of such taxes.

That during the year 1934 plaintiff suffered a loss in the operation of its pork department of approximately \$6,208.06, taking into consideration the cost of materials and the fixed operating expenses; while for the first five months of the year 1935 such loss was the sum of \$10,-496.62, on a like basis, and that such loss occurring is

directly due to the levying and collection of said processing tax.

That prior to the levy of said tax, plaintiff was able, over a long course of years, to operate its said pork packing business on a satisfactory basis; that since the advent and collection of said tax from plaintiff, plaintiff has suffered, and will continue to suffer, so long as said Act is in force, large losses in its said pork packing business brought about directly by the collection of such tax, and, in fact, during such time plaintiff could not have continued and would not have continued in such business, excepting that the departments of plaintiff's meat packing business, other than the pork department, have succeeded in absorbing such loss to such extent that plaintiff has been enabled to carry on its meat packing business as an entirety, although such loss existed and was and is borne by plaintiff nevertheless.

That there has been levied and assessed against the plaintiff as a processor of hogs under the terms of the Act, commencing with all hogs processed on November 5, 1933, and thereafter, a processing tax, at the rate fixed by said Secretary of Agriculture, as aforesaid, on the live weight of all hogs processed by plaintiff from and after that date, and that plaintiff has paid on account of such tax to the Collector of Internal Revenue for said Sixth District the following sums of money for each of the following months since that time:

1933

November\$ 2,008.87

December 4,992.20

1934

January 5,653.35

February 6,546.74

March 6,317.14

April 6,672.16

May 6,111.60

June 8,322.21

July 7,489.64

August 5,751.07

September 5,716.57

October 6,612.98

November 6,177.28

December 6,345.45

1935

January 6,112.46

February 6,263.07

Total

\$97,092.79

And that for the months of March, April and May, 1935, there has been assessed against plaintiff a similar tax, as hereinafter shown, which yet remains unpaid.

That the said tax assessed against plaintiff, as aforesaid, in terms of percentage to the sales of pork made by plaintiff during said time was and is 22.78% for the year 1934, and 17.85% for the first five months of the year 1935; and the business of said plaintiff in its packing of pork cannot endure or make such payments

and continue to carry on such business, for the reason that the working capital allotted to such pork department of necessity will from time to time grow less and less and finally become entirely depleted.

That inasmuch as plaintiff cannot control the retail prices of pork, and the retailers of such commodity have been unable to raise the retail price thereof to such level that plaintiff is enabled to pass the amount of such tax on to the consumer, said plaintiff is compelled to bear the loss of that portion of the tax not absorbed by the consumer, which is considerable, and such loss is irreparable to said plaintiff, said plaintiff having no way to recover such loss.

XI.

That there has been assessed against plaintiff under said Act, as aforesaid, a processing tax in the following amounts, for the following months, the due date thereof being indicated, as follows:

1935	Amount of Tax	Due Date
March	\$6,968.61	May 31, 1935
April	6,385.90	June 30, 1935
May	5,980.90	June 30, 1935

That said plaintiff has not paid the aforesaid taxes assessed for the months of March, April and May, 1935, for the reason so to do will create in its said pork packing business a further and additional loss to the extent and amount of such taxes, and furthermore, such plaintiff has been informed and believes, and therefore avers, that the assessment of such taxes is unconstitutional and void, and that any attempt to collect the same, or any

part thereof, is illegal and beyond the power of the Collector of Internal Revenue so to do.

Plaintiff further avers that so long as said Act is enforced, there will be levied and assessed against plaintiff processing taxes, in character and monthly average amount approximating the foregoing itemization of taxes, provided plaintiff continues during that time to slaughter hogs in like average volume as in the past, and that such future taxes cannot and will not be paid by plaintiff for the foregoing reasons.

XII.

That the failure of the plaintiff to pay said processing taxes, as and when due, will result in the imposition by the said Collector of Internal Revenue of the following penalties against plaintiff and the following losses to it:

(a) A penalty of interest at the rate of one per cent per month from the due date of each monthly installment of said tax;

(b) A penalty of five per cent of the total amount of the tax on the failure of the plaintiff to pay within ten days after demand by the said Collector; said penalties being added to the amount of the tax and the total tax and penalty thereafter drawing interest at the rate of one per cent per month;

(c) After a second ten days' notice the Collector is authorized, under the provisions of the applicable law, if the tax, penalties and interest are not paid, to distrain the plaintiff's slaughtering house and plant, its manufactured products and merchandise on hand, cash on hand, bank accounts and all of its other property for the purpose of realizing the amount of the tax, penalty and interest;

(d) In addition thereto Section 19, subsection (b) of the Act provides: "That all provisions of law, including penalties, applicable with respect to the taxes imposed by Section 600 of the Revenue Act of 1926 and the provisions of Section 626 of the Revenue Act of 1932, shall insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title. * * *"

That under the provisions of this subsection (b), any person who willfully fails to pay said tax is subject to a fine of \$10,000.00 or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of tax not collected or paid.

That the plaintiff owns not only the slaughtering house and packing plant, together with the machinery and equipment hereinbefore described of great value, but manufactured products and merchandise on hand of a large value, and bank accounts and cash on hand; that repeated levies upon and distraint of this property from month to month will cause plaintiff irreparable loss and damage in that such levies and distraints will impair the valuable good will of its business built up since its incorporation, as aforesaid, and will seriously interfere with, if not prevent the actual operation of its plant and the sale of its products, and will result in a permanent injury to its business and good will in excess of \$200,000.00; and if the said Collector of Internal Revenue should from month to month sell and dispose of such property under such distraint, the whole of said property and the good will of said business will become wholly lost to said plaintiff to its further irreparable damage in the premises.

That unless said defendants are enjoined and restrained by order of this Court from so doing, said defendants will assess processing taxes against plaintiff; impose said penalties upon plaintiff for the non-payment of the tax; collect from plaintiff the processing taxes now due or hereafter to become due, whether by distraint, levy, action at law or in equity; impose or give notice of intention to impose a lien or liens upon the property of plaintiff; make distraint upon the property of plaintiff on account of said tax and sell such property in collection of such tax; and thereby wholly take from plaintiff its said property and good will of said business; and that unless defendants are so restrained, and until hearing hereof temporarily enjoined, they will nevertheless proceed against plaintiff as above even though this Court shall have declared such tax to be illegal and unenforcible, and thereby render valueless to plaintiff such declaratory judgment.

XIII.

Plaintiff is advised and believes, and therefore avers and represents, that the processing tax levied by the Secretary of Agriculture upon the processing of hogs for the month of March, April and May, 1935, is invalid and void in that the rate of such tax has been fixed by the Secretary of Agriculture in complete disregard of the formula prescribed by the Agricultural Adjustment Act itself for the establishment of such rate; and plaintiff further avers that the Act provides, in Section 9 thereof, that the tax is to be at such rate as equals the difference between the current average farm price for the commodity taxed and the fair exchange value of that commodity; and that, as hereinbefore averred, the rate of tax was as of March, 1934, fixed by the Secretary of

Agriculture at \$2.25 per hundredweight, live weight, of hogs, and such rate has been in effect continuously to the present date and is the rate upon which the tax for the months in question was assessed against plaintiff.

Plaintiff is informed and believes, and therefore avers, that for the first four months of the year 1935 the average current farm price of hogs, the fair exchange value therefor, and the resulting difference in dollars and cents between such figures, as calculated and determined by the Department of Agriculture, were as follows:

	Fair exchange value of pre- war parity farm price for hogs	Actual farm price for hogs	Excess of pre- war parity over actual
1935			
January	9.10 per cwt.	6.87 per cwt.	2.23 per cwt.
February	9.17 " "	7.10 " "	2.07 " "
March	9.24 " "	8.10 " "	1.14 " "
April	9.24 " "	7.88 " "	1.36 " "

That by reason of the current average farm price for the month of May, 1935, the excess of pre-war parity over the actual current price was even less than for the month of April; that the rate of such tax for the months in question is consequently substantially in excess of the difference between the average current farm price and the fair exchange value for hogs for the taxable period in question; and that for this reason the levy of the tax at the rate of \$2.25 for the said months in question is arbitrary, capricious, oppressive and in disregard of the standards prescribed by the said Act of Congress, even though such Act be assumed to be valid; and that such tax so assessed against plaintiff for said months is void and uncollectible by reason of the failure to observe such standards, is in

excess of the authority conferred upon the Secretary of Agriculture, and is entirely unjustified even by the plan and scheme outlined by the Act.

XIV.

Plaintiff further represents that the said processing tax on hogs is unconstitutional, illegal and void for the following reasons:

(a) The scheme of local production-control set up by the Agricultural Adjustment Act is not within any of the powers conferred upon Congress by the Constitution of the United States; and if it is the exercise of any governmental power, it is of a power reserved to the states under the Tenth Amendment to said Constitution; that the declared policy of such Act is to limit production of farm products, to raise the price of such products, and to fix prices at an arbitrary level which will give the farmer the same purchasing power for his products or their fair exchange value as they presumably had in the period 1909-1914; that the power thus to control production is nowhere expressly or impliedly granted to Congress by the Constitution; that the processing tax is not a revenue measure but an integral part of a scheme to accomplish an unconstitutional purpose; and that the tax goes into effect only when benefit or rental payments are found necessary by the Secretary of Agriculture, and automatically ceases when farm prices reach the level fixed by the Act.

(b) The processing tax (considered apart from the scheme for production control) is not within the power granted to Congress by Article I, Section 8, of the Constitution of the United States "to lay and collect taxes, duties, imposts and excises"; and is in violation of the Fifth Amendment to the Constitution in that it takes prop-

erty without due process of law; that it is not a tax within the meaning of the Constitution; that it is merely an invalid means to accomplish an illegal end; that the proceeds of such tax are not levied for general revenue or for a public purpose, but on the contrary, the exaction is an arbitrary levy upon one class of citizens for the benefit of another class; that the rate of tax bears no reasonable relation to the property taxed, and is not based upon the amount of property involved or the amount of business done, but upon purely arbitrary and unrelated factors having to do only with the purchasing power of the proceeds derived from the sale of farm products; that these factors in turn are constantly variable, uncertain and impossible of exact determination; and the rate of tax is consequently indefinite and shifting; that the exaction is neither a tax on property nor a tax upon sales; and that the rate is exorbitant, confiscatory and destructive of lawful business.

(c) Assuming the tax to be otherwise valid, the power granted by the Act to the Secretary of Agriculture to determine and levy the processing tax involves an invalid delegation by Congress of its power to tax; for the Secretary of Agriculture alone determines at his own discretion the particular commodity to be taxed, when the tax is to be levied, what the rate of the tax shall be, when the tax shall begin, and when the tax is to cease; and that this is in violation of Article I, Section 1 of the Constitution aforesaid, as well as Article I, Section 8, paragraph 18 thereof.

(d) And lastly, the Act is violative of the Fifth Amendment to said Constitution, in that said Act interferes with and attempts to regulate intrastate commerce and to control and regulate wholly domestic affairs of the states respectively.

XV.

Plaintiff further shows and represents that an actual and immediate controversy exists between said plaintiff and defendants, in that said plaintiff has heretofore maintained and now maintains, and has so notified and advised the Collector of Internal Revenue of said Sixth District, that the said Act was unconstitutional, void and unenforceable for the reasons hereinbefore assigned for such unconstitutionality thereof, and has refused to pay the tax now due and payable by this plaintiff, as aforesaid, for that reason, as well as for the reason of its inability so to pay; whereas, on the other hand said Collector of Internal Revenue of said District has at all times maintained and now maintains, and has so stated to said plaintiff, that said Act is constitutional and enforceable, and that he intends to and will proceed to assess the tax provided by said Act on the hogs processed by this plaintiff, as aforesaid, and to collect such tax so levied under the terms and authority of said Act.

That said tax represents a continuing drain on the assets of plaintiff, which it cannot meet and still remain in business; that plaintiff has made request to said Collector of said District for an extension of time for the payment of the said tax assessed against said plaintiff for the hogs processed by it during the month of March, 1935, as aforesaid, but that defendants have recently notified said plaintiff that such request is denied, and that, therefore, further time cannot be obtained by said plaintiff for the payment of said March tax; that plaintiff has even offered to make an attempt to furnish the Collector of Internal Revenue for such District with a bond in an amount sufficient to cover the taxes, interest and penalties so due and

owing under the terms of said Act by said plaintiff, as aforesaid, but said Collector has refused to accept a bond even if plaintiff could have furnished such bond; and that, therefore, plaintiff has exhausted all efforts of obtaining any consideration or relief from said defendants, and they will proceed to collect said taxes under the terms of said Act and in the manner hereinbefore detailed; and that in aid thereof, said defendants will subject all of the property of said plaintiff to lien and distraint, and such lien and such distraint will prevent the sale or disposition of any of plaintiff's assets, and will completely and permanently destroy the business and good will of the plaintiff.

And that for these reasons it is *mete*, equitable and necessary that the aforesaid controversy should be determined between said parties.

XVI.

That plaintiff is in need of immediate equitable relief; that it has no adequate remedy at law and will suffer immediate, permanent and irreparable injury and damage unless the relief prayed for in this bill is promptly granted.

That the rate of said processing tax is so high that plaintiff is suffering an intolerable loss each month and will continue to do so as long as said Act is in effect; that said plaintiff cannot continue to pay the tax assessed against it and remain in the pork packing business, for the reason that the constant loss suffered in and by such business on account of the assessment and payment of said tax will greatly and finally exhaust and wholly deplete the assets and working capital of plaintiff used in such pork packing business.

That plaintiff has not the resources to pay the taxes each month and thereupon bring its action to recover each installment, even if such a remedy is technically available to it; that not only would there be involved a multiplicity of suits, but the delay incident to the termination of such actions at law would prove an effective deterrent because of the financial impossibility of making such payments, as well as is there grave doubt that any judgment obtained in any such suit would ever be paid to plaintiff.

XVII.

That in addition thereto the remedy of a suit by plaintiff, as aforesaid, to recover any such processing tax after payment by it under such Act would not on the one hand be of any benefit or gain to it, and on the other hand such action, in any event, will not be open and available to it; that as to the first instance, plaintiff is advised and believes, and therefore represents, that even if it should be successful in obtaining a final judgment or judgments in plaintiff's favor for the recovery and refund of such taxes so paid by it, such judgment would be wholly and effectually nullified by the Congress and the United States Government failing and refusing to make the necessary appropriation from the money in the Treasury of the United States, or to make other arrangements, for the purpose of the payment of such judgments, whether one or more; and in the second instance, that on or about the 18th day of June, 1935, the House of Representatives of the Congress of the United States enacted certain amendments (H. R. 8492) to the said Agricultural Adjustment Act, wherein among other things, it is provided that no suit or proceeding shall be brought or maintained, nor shall any judgment or

decree be entered by, any Court for a recoupment or refund of any tax assessed, paid, collected or accrued under said Act prior to the date of the adoption of said amendments, except and unless a final judgment or decree therefor should be entered prior to the date of the adoption of such amendment, nor for any taxes assessed and collected after such amendments should be adopted; that doubtless such amendments will be likewise passed by the Senate and immediately thereupon signed and approved by the President of the United States, after which said plaintiff: would be powerless under the wording of the amendments above referred to to commence or maintain an action at law for the refund or recovery of any of such processing tax now assessed against it under said Act and remaining unpaid; that plaintiff is and will be unable not only to pay said tax, but if such should be paid, it would be unable to prosecute any suit or suits at law to final judgment before said amendments to said Act becomes effective.

That the mere threat that such amendments will become law, and doubtless such amendments will be enacted and become law, makes the availability of a legal remedy so doubtful, uncertain and hazardous, as to require and to entitle plaintiff to the equitable relief herein prayed for; and that plaintiff is advised and believes, and therefore represents, that should the proposed amendments become law, plaintiff will technically be deprived of any remedy at law by the express terms of the amendments, and, therefore, would be unable to test the validity of the assessment and collection of the tax in any proceeding whatever, unless the relief prayed for in this bill be granted as aforesaid.

SECOND CAUSE OF ACTION

FOR ANOTHER, FURTHER AND SECOND CAUSE OF ACTION AGAINST SAID DEFENDANTS, BEING FOR INJUNCTIVE RELIEF ONLY, said plaintiff complains and represents as follows:

I.

That plaintiff is a corporation incorporated, organized and existing under the laws of the State of California, and was so incorporated on the 28th day of September, 1913; that it was incorporated for the purpose, among other things, of slaughtering hogs and of packing, curing and selling pork and all hog products; that such corporation is a citizen of the State of California, and has its principal office and place of business in the City of Vernon, County of Los Angeles, State of California, and in the said Sixth District of California.

II.

That said defendant, Nat Rogan, is the duly appointed, qualified and acting Collector of Internal Revenue of and for the said Sixth District of California; and that said Nat Rogan is a citizen of the United States and of the State of California, and resides in the City of Los Angeles, County of Los Angeles, State of California, and in the Sixth Collection District.

That said defendant, E. M. Cohee, was for many months prior to the 1st day of July, 1935, the Acting Collector of Internal Revenue of and for the Sixth District of California, and as such was duly appointed and qualified to perform the duties of that office; that he is now the Chief Deputy Collector of Internal Revenue of said District; and that he resides in the City of

Los Angeles, County of Los Angeles, State of California, and in the said Sixth Collection District, and is a citizen of the United States and of the said State of California; and that such deputy is frequently in charge of the matter of collecting said revenue in said District in the temporary absence of the Collector.

That it is the duty of said Nat Rogan, as said Collector for said District to collect or attempt to collect in such District all internal revenue assessed against this plaintiff under the Agricultural Adjustment Act, hereinafter referred to, upon the hogs processed by plaintiff as defined in such Act; and that it is the duty of said E. M. Cohee to make collection of such revenue in the absence of said Nat Rogan, said Collector.

III.

That the said Sixth District was heretofore by law established as a subdivision of the United States for the purpose of the convenient collecting of taxes provided by the Internal Revenue law of such United States, and comprises and embraces the whole of that part of California lying south of a line constituting the north boundary lines of San Luis Obispo, Kern and San Bernardino Counties in said State of California.

IV.

That the matter in controversy exceeds in value the sum of \$3,000.00, exclusive of interest and costs, and such matter and the controversy in relation thereto exist and arise under the Constitution and laws of the United States of America, the relevant portions of which are hereinafter set forth and referred to.

V.

That for nearly twenty-two years last past plaintiff has been continually and actively engaged in the purchase, slaughter and processing of hogs and the sale of pork and hog products to retailers; and in the course of its business has developed and maintained a substantial and valuable trade and good will; and that said plaintiff at none of the times herein mentioned was engaged, nor is it now engaged, in interstate commerce in any degree in the operation of its said business, nor does the carrying on of its said business in anywise obstruct or interfere with interstate commerce; that at all of the times herein mentioned said plaintiff, in the carrying on of its said business, slaughtered and processed and now slaughters and processes hogs only in the State of California, to-wit, in the said City of Vernon, and during such times transported and sold, and now transports and sells, the resulting pork and other products only within the boundaries of the said State of California, and not elsewhere.

VI.

That on May 12, 1933, the President of the United States approved PL #10 of the 73rd Congress of the United States (HR3835), known as the Agricultural Adjustment Act, 48 U. S. Stat. at Large, Part I, pp. 31, et seq., which said Act was thereafter amended June 16, 1933; April 7, 1934; May 9, 1934; May 25, 1934; June 16, 1934; June 19, 1934; June 26, 1934; June 28, 1934; and March 18, 1935, the same being Title I, Chapter 26, Act of May 12, 1933, U. S. C. A. Title 7, Chapter 26, Sections 601 to 619, inclusive; that copies of the relevant sections and portions thereof are set forth in "Exhibit A", hereto attached and hereby referred to,

and by such reference made a part hereof; and that the said Agricultural Adjustment Act is hereinafter, for the sake of brevity, sometimes referred to as the Act.

That the Act provides for the assessment and collection of what is styled in the Act a "tax", prescribes a formula by which the Secretary of Agriculture, a member of the Cabinet of the President of the United States, is to determine the measure or amount of such tax, and to specify and determine the circumstances under which the tax becomes payable; that under this Act taxes have been assessed against the plaintiff in ruinous amounts and large sums have been paid by plaintiff on account, all as hereinafter specified in exact detail; that plaintiff charges, as hereinafter more particularly averred, that the Secretary of Agriculture ever since the 1st day of January, 1935, has ignored the formula specified in the Act in assessing the tax, and since last mentioned date has assessed said tax and threatens to continue so to do in total disregard of the fact that the statutory conditions precedent to such assessment have ceased to exist; that plaintiff further charges, on the grounds hereinafter set forth, that, even if assessed as prescribed by the Act, the so-called tax is wholly illegal and void because the assessment thereof and the tax itself are in violation of the Constitution of the United States; and that plaintiff, being threatened with ruinous penalties for non-payment of said tax heretofore assessed under the Act against it and remaining unpaid, and being threatened with proceedings for the collection of said tax and penalties in a manner and to the extent that will wholly destroy the said business and good will of plaintiff, as hereinafter more particularly shown, and being without any adequate remedy at law, seeks the equitable relief herein prayed for.

VII.

That the provisions of said Act are applicable to hogs and a variety of other commodities; but for the sake of simplicity the provisions of the Act and the Act itself are herein analyzed as if it applied to and included only hogs.

That the objective of the Congress, as declared in the Act, is the restoration of a pre-war standard of value of hogs in terms of power to purchase such articles as farmers buy; that this objective is sought to be obtained by a plan and scheme so to control the production of hogs as to raise their market price to the level at which the producer thereof will receive enough purchase money to enable him to buy, at current prices, as many of the said articles which farmers buy as, in the pre-war period, they would have been able to obtain by the sale of the same number of hogs.

That the nature of the control contemplated by the Act is to reduce production of hogs by the farmer to a point at which scarcity will result in a rise in the market price thereof, or otherwise to withdraw from the market hogs already produced, to the extent necessary to prevent the price from going down; that, however, instead of a direct statutory prohibition upon production, the scheme of the Act is to pay to the producer sums of money ample to deter him from production, thus substituting a pecuniary inducement to curtail production more potent and effective than an easily evaded prohibition.

That in order to acquire and raise the money necessary and required to make the aforesaid control of production effective, the Act directs the said Secretary of Agriculture to assess and levy on those slaughtering and proc-

essing hogs, and the resulting funds are then to be paid to the producers in the form of consideration or compensation for the theoretical losses sustained by the producer by and through the aforesaid resultant non-production.

That the statutory formula, contained in the Act, for determining the amount of the tax is that it is to be at such rate as equals the difference between the current average farm price for hogs and their fair exchange value determined as above averred; and the Secretary of Agriculture is empowered to make the necessary findings of fact to effectuate the formula; that the tax is to be assessed against and collected from those processors, including the plaintiff, who buys hogs from the farmer and slaughters them for market; and that the slaughtering of the hog is defined by the act as "processing" and the tax is styled a "processing tax", but neither in fact nor in theory does the levy of the tax nor the determination of its amount bear any relation whatever to processing, but it appears to be so styled merely to identify who the citizens are who must pay the tax in order to raise the price to them of the hogs which the taxpayers buy.

That the scheme of the Act is not, however, confined to a reduction in the production of hogs; but the Act specifies a number of so-called basic agricultural commodities, all of which are subject to the same drastic regulations above described; that, in addition, the Secretary of Agriculture is given power to determine if the processing tax as levied upon the commodities specified in the Act and its amendments is causing or "will cause" a disadvantage to such commodities by reason of competition with any other commodities, or the products

thereof; and if he finds such to be the case, he is empowered to proclaim such determination and a “compensatory tax” is thereafter to be levied upon such competing commodity or commodities, or the products thereof, at a rate to be determined and proclaimed by the Secretary of Agriculture; and that finally the Secretary is given power to license processors, associations of producers and others “to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof”; that he may suspend or revoke any such license for violations of the terms or conditions; and any person engaged in such handling without a license as required by the Secretary is declared subject to a fine of not more than \$1,000.00 for each day during which the violation continues.

That the dominant plan and scheme of the Act as expressed therein is therefore to put in the hands of the Secretary of Agriculture effective and absolute control not only of the production of all agricultural commodities and the prices for which they are to be sold, but to give him equal control over the private business of all those who handle such commodities or their products, or any other products that may conceivably be deemed by him to be competitive.

And that according to its terms, the Act shall continue in its operation and in force and effect until such time as the President of the United States finds and proclaims that the National Economic Emergency, mentioned in the Act as the reason for the adoption thereof, has terminated and ended; that, however, such findings has not been made, and consequently said Act is yet effective and in force, and the said Collector of Internal Revenue for the

Sixth Collection District is continuing and will in the future continue to collect, or attempt to collect said processing tax and otherwise execute the duties assigned to him under the act, until and unless the Act is by decree of Court having jurisdiction thereof, adjudged to be unconstitutional and illegal, or until such Collector is enjoined by such Court from all such execution of the terms of said Act.

VIII.

That by virtue of the supposed authority conferred upon him by the Act, the Secretary of Agriculture determined and proclaimed a processing tax on hogs, to become effective as of November 5, 1933, at a rate of fifty cents per hundred weight, live weight; and that the said rate of tax was subsequently increased as follows, to-wit, in December, 1933, to \$1.00 per hundredweight, live weight, in February, 1934, to \$1.50 per hundred weight, live weight; and in March, 1934, to \$2.25 per hundredweight, live weight; and that such rate of said tax has ever since been and now is in effect.

IX.

That under the Act said processing taxes are assessed and collected on the first domestic processing of the commodities, including hogs, and are required to be paid by the processor; that, as hereinbefore shown, plaintiff has been at all of the times herein mentioned and now is a processor of hogs as defined by the Act, and is required by the Act to pay to the Collector of said District monthly the said processing tax so fixed, determined and proclaimed by said Secretary of Agriculture with respect to all hogs slaughtered by it.

That at and during all the times herein mentioned said plaintiff has been and now is engaged in the business generally of slaughtering animals, including said hogs, and selling the same for human consumption, and as a part of such business, in preparing and manufacturing the meat and meat products therefrom; that said plaintiff has been at all said times and now is the owner of a large slaughtering house and packing house located in said City of Vernon, equipped with costly machinery and appliances for the successful carrying on and maintenance of said business, including the transportation and sale of said meat and meat products; but that all said business is entirely carried on, and the transportation and sale of all said meat and meat products are so transported and sold by it, only within the boundaries of the said State of California, and not in anywise in interstate commerce; nor does such business, transportation and sale in any degree obstruct or interfere with interstate commerce.

X.

That, therefore, such tax on the processing of hogs has been since the said 5th day of November, 1933, levied and assessed on all hogs processed by plaintiff during that time, and is now being so levied and assessed on all the hogs processed by plaintiff within the terms of the Act; that in addition to the illegal and unwarranted collection of said tax from said plaintiff, said plaintiff has been and is continuing to be directly, oppressively and ruinously affected by such assessment and collection of such taxes.

That during the year 1934 plaintiff suffered a loss in the operation of its pork department of approximately \$6,208.06, taking into consideration the cost of materials and the fixed operating expenses; while for the first

five months of the year 1935 such loss was the sum of \$10,496.62, on a like basis, and that such loss occurring is directly due to the levying and collection of said processing tax.

That prior to the levy of said tax, plaintiff was able, over a long course of years, to operate its said pork packing business on a satisfactory basis; that since the advent and collection of said tax from plaintiff, plaintiff has suffered, and will continue to suffer, so long as said Act is in force, large losses in its said pork packing business brought about directly by the collection of such tax, and, in fact, during such time plaintiff could not have continued and would not have continued in such business, excepting that the departments of plaintiff's meat packing business, other than the pork department, have succeeded in absorbing such loss to such extent that plaintiff has been enabled to carry on its meat packing business as an entirety, although such loss existed and was and is borne by plaintiff nevertheless.

That there has been levied and assessed against the plaintiff as a processor of hogs under the terms of the Act, commencing with all hogs processed on November 5, 1933, and thereafter, a processing tax, at the rate fixed by said Secretary of Agriculture, as aforesaid, on the live weight of all hogs processed by plaintiff from and after that date, and that plaintiff has paid on account of such tax to the Collector of Internal Revenue for said Sixth District the following sums of money for each of the following months since that time:

1933

November\$ 2,008.87

December 4,992.20

1934

January 5,653.35

February 6,546.74

March 6,317.14

April 6,672.16

May 6,111.60

June 8,322.21

July 7,489.64

August 5,751.07

September 5,716.57

October 6,612.98

November 6,177.28

December 6,345.45

1935

January 6,112.46

February 6,263.07

Total\$97,092.79

And that for the months of March, April and May, 1935, there has been assessed against plaintiff a similar tax, as hereinafter shown, which yet remains unpaid.

That the said tax assessed against plaintiff, as afore-said, in terms of percentage to the sales of pork made by plaintiff during said time was and is 22.78% for the year 1934, and 17.85% for the first five months of the year 1935; and that the business of said plaintiff in its packing of pork cannot endure or make such payments and continue to carry on such business, for the reason that the working capital allotted to such pork department

of necessity will from time to time grow less and less and finally become entirely depleted.

That inasmuch as plaintiff cannot control the retail prices of pork, and the retailers of such commodity have been unable to raise the retail price thereof to such level that plaintiff is enabled to pass the amount of such tax on to the consumer, said plaintiff is compelled to bear the loss of that portion of the tax not absorbed by the consumer, which is considerable, and such loss is irreparable to said plaintiff, said plaintiff having no way to recover such loss.

XI.

That there has been assessed against plaintiff under said Act, as aforesaid, a processing tax in the following amounts, for the following months, the due date thereof being indicated as follows:

1935	Amount of Tax	Due Date
March	\$6,968.61	May 31, 1935
April	6,385.90	June 30, 1935
May	5,980.90	June 30, 1935
<hr/>		
Total	\$19,335.41	

That said plaintiff has not paid the aforesaid taxes assessed for the months of March, April and May, 1935, for the reason so to do will create in its said pork packing business a further and additional loss to the extent and amount of such taxes, and furthermore, such plaintiff has been informed and believes, and therefore avers, that the assessment of such taxes is unconstitutional and void, and that any attempt to collect the same or any part thereof, is illegal and beyond the power of the Collector of Internal Revenue so to do.

Plaintiff further avers that so long as said Act is enforced, there will be levied and assessed against plaintiff processing taxes, in character and monthly average amount approximately the foregoing itemization of taxes, provided plaintiff continues during that time to slaughter hogs in like average volume as in the past, and that such future taxes cannot and will not be paid by plaintiff for the foregoing reasons.

XII.

That the failure of the plaintiff to pay said processing taxes, as and when due, will result in the imposition by the said Collector of Internal Revenue of the following penalties against plaintiff and the following losses to it:

(a) A penalty of interest at the rate of one per cent per month from the due date of each monthly installment of said tax;

(b) A penalty of five per cent of the total amount of the tax on the failure of the plaintiff to pay within ten days after demand by the said Collector; said penalties being added to the amount of the tax and the total tax and penalty thereafter drawing interest at the rate of one per cent per month;

(c) After a second ten days' notice the Collector is authorized, under the provisions of the applicable law, if the tax, penalties and interest are not paid, to distrain the plaintiff's slaughter-house and plant, its manufactured products and merchandise on hand, cash on hand, bank accounts and all of its other property for the purpose of realizing the amount of the tax, penalty and interest;

(d) In addition thereto Section 19, subsection (b) of the Act provides: "That all provisions of law, including penalties, applicable with respect to the taxes imposed by

Section 600 of the Revenue Act of 1926 and the provisions of Section 626 of the Revenue Act of 1932, shall insofar as applicable and not inconsistent with the provisions of this title, be applicable in respect of taxes imposed by this title. * * *

That under the provisions of this subsection (b) any person who willfully fails to pay said tax is subject to a fine of \$10,000.00 or imprisonment, or both, with costs of prosecution, and is also liable to a penalty equal to the amount of the tax not collected or paid.

That the plaintiff owns not only the slaughtering house and packing plant, together with the machinery and equipment hereinbefore described of great value, but manufactured products and merchandise on hand of a large value, and bank accounts and cash on hand; that repeated levies upon and distraint of this property from month to month will cause plaintiff irreparable loss and damage in that such levies and distraints will impair the valuable good will of its business built up since its incorporation, as aforesaid, and will seriously interfere with, if not prevent the actual operation of its plant and the sale of its products, and will result in a permanent injury to its business and good will in excess of \$200,000.00; and if the said Collector of Internal Revenue should from month to month sell and dispose of such property under such distraint, the whole of said property and the good will of said business will become wholly lost to said plaintiff to its further irreparable damage in the premises.

XIII.

Plaintiff is advised and believes, and therefore avers and represents, that the processing tax levied by the Secretary of Agriculture upon the processing of hogs for the months of March, April and May, 1935, is invalid

and void in that the rate of such tax has been fixed by the Secretary of Agriculture in complete disregard of the formula prescribed by the Agricultural Adjustment Act itself for the establishment of such rate; and plaintiff further avers that the Act provides, in Section 9 thereof, that the tax is to be at such rate as equals the difference between the current average farm price for the commodity taxed and the fair exchange value of that commodity; and that, as hereinbefore averred, the rate of tax was as of March, 1934, fixed by the Secretary of Agriculture at \$2.25 per hundredweight, live weight, of hogs, and such rate has been in effect continuously to the present date and is the rate upon which the tax for the months in question was assessed against plaintiff.

Plaintiff is informed and believes, and therefore avers, that for the first four months of the year 1935 the average current farm price of hogs, the fair exchange value therefor, and the resulting difference in dollars and cents between such figures, as calculated and determined by the Department of Agriculture, were as follows:

	Fair exchange value of pre-war parity farm price for hogs	Actual farm price for hogs	Excess of pre- war parity over actual
1935			
January	9.10 per cwt.	6.87 per cwt.	2.23 per cwt.
February	9.17 " "	7.10 " "	2.07 " "
March	9.24 " "	8.10 " "	1.14 " "
April	9.24 " "	7.88 " "	1.36 " "

That by reason of the current average farm price for the month of May, 1935, the excess of pre-war parity over the actual current price was even less than for the month of April; that the rate of such tax for the months

in question is consequently substantially in excess of the difference between the average current farm price and the fair exchange value for hogs for the taxable period in question; and that for this reason the levy of the tax at the rate of \$2.25 for the said months in question is arbitrary, capricious, oppressive and in disregard of the standards prescribed by the said Act of Congress, even though such Act be assumed to be valid; and that such tax so assessed against plaintiff for said months is void and uncollectible by reason of the failure to observe such standards, is in excess of the authority conferred upon the Secretary of Agriculture, and is entirely unjustified even by the plan and scheme outlined by the Act.

XIV.

Plaintiff further represents that the said processing tax on hogs is unconstitutional, illegal and void for the following reasons:

(a) The scheme of local production-control set up by the Agricultural Adjustment Act is not within any of the powers conferred upon Congress by the Constitution of the United States; and if it is the exercise of any governmental power, it is of a power reserved to the states under the Tenth Amendment to said Constitution; that the declared policy of such Act is to limit production of farm products, to raise the price of such products, and to fix prices at an arbitrary level which will give the farmer the same purchasing power for his products or their fair exchange value as they presumably had in the period 1909-1914; that the power thus to control production is nowhere expressly or impliedly granted to Congress by the Constitution; that the processing tax is not a revenue measure but an integral part of a scheme to accomplish an unconstitutional purpose; and that the tax goes into

effect only when benefit or rental payments are found necessary by the Secretary of Agriculture, and automatically ceases when farm prices reach the level fixed by the Act.

(b) The processing tax (considered apart from the scheme for production control) is not within the power granted to Congress by Article I, Section 8, of the Constitution of the United States "to lay and collect taxes, duties, imposts and excises"; and is in violation of the Fifth Amendment to the Constitution in that it takes property without due process of law; that it is not a tax within the meaning of the Constitution; that it is merely an invalid means to accomplish an illegal end; that the proceeds of such tax are not levied for general revenue or for a public purpose, but on the contrary, the exaction is an arbitrary levy upon one class of citizens for the benefit of another class; that the rate of tax bears no reasonable relation to the property taxed, and is not based upon the amount of property involved or the amount of business done, but upon purely arbitrary and unrelated factors having to do only with the purchasing power of the proceeds derived from the sale of farm products; that these factors in turn are constantly variable, uncertain and impossible of exact determination; and the rate of tax is consequently indefinite and shifting; that the exaction is neither a tax on property nor a tax upon sales; and that the rate is exorbitant, confiscatory and destructive of lawful business.

(c) Assuming the tax to be otherwise valid, the power granted by the Act to the Secretary of Agriculture to determine and levy the processing tax involves an invalid delegation by Congress of its power to tax; for the Secretary of Agriculture alone determines at his own discretion

the particular commodity to be taxed, when the tax is to be levied, what the rate of the tax shall be, when the tax shall begin, and when the tax is to cease; and that this is in violation of Article I, Section 1 of the Constitution aforesaid, as well as Article I, Section 8, paragraph 18 thereof.

(d) And lastly, the Act is violative of the Fifth Amendment to said Constitution, in that said Act interferes with and attempts to regulate intrastate commerce and to control and regulate wholly domestic affairs of the states respectively.

XV.

That plaintiff is in need of immediate equitable relief; that it has no adequate remedy at law and will suffer immediate, permanent and irreparable injury and damage unless the relief prayed for in this bill is promptly granted.

That the rate of said processing tax is so high that plaintiff is suffering an intolerable loss each month and will continue to do so as long as said Act is in effect; that said plaintiff cannot continue to pay the tax assessed against it and remain in the pork packing business, for the reason that the constant loss suffered in said tax will greatly and finally exhaust and wholly deplete the assets and working capital of plaintiff used in such pork packing business.

That plaintiff has not the resources to pay the taxes each month and thereupon bring its action to recover each installment, even if such a remedy is technically available to it; that not only would there be involved a multiplicity of suits, but the delay incident to the termination of such actions at law would prove an effective deterrent because of the financial impossibility of making such payments, as

well as is there grave doubt that any judgment obtained in any such suit would ever be paid to plaintiff.

XVI.

That in addition thereto the remedy of a suit by plaintiff, as aforesaid, to recover any such processing tax after payment by it under such Act would not on the one hand be of any benefit or gain to it, and on the other hand such action, in any event, will not be open and available to it; that as to the first instance, plaintiff is advised and believes, and therefore represents, that even if it should be successful in obtaining a final judgment or judgments in plaintiff's favor for the recovery and refund of such taxes so paid by it, such judgment would be wholly and effectually nullified by the Congress and the United States Government failing and refusing to make the necessary appropriation from the money in the Treasury of the United States, or to make other arrangements, for the purpose of the payment of such judgments, whether one or more; and in the second instance, that on or about the 18th day of June, 1935, the House of Representatives of the Congress of the United States enacted certain amendments (H. R. 8492) to the said Agricultural Adjustment Act, wherein among other things, it is provided that no suit or proceeding shall be brought or maintained, nor shall any judgment or decree be entered by, any Court for a recoupment or refund of any tax assessed, paid, collected or accrued under said Act prior to the date of the adoption of said amendments, except and unless a final judgment or decree therefor should be entered prior to the date of the adoption of such amendments, nor for any taxes assessed and collected after such amendments should be adopted; that doubtless such amendments will be likewise passed by the Senate and immediately thereupon signed and ap-

proved by the President of the United States, after which said plaintiff would be powerless under the wording of the amendments above referred to, to commence or maintain an action at law for the refund or recovery of any of such processing tax now assessed against it under said Act and remaining unpaid; that plaintiff is and will be unable not only to pay said tax, but if such should be paid, it would be unable to prosecute any suit or suits at law to final judgment before said amendments to said Act become effective.

That the mere threat that such amendments will become law, and doubtless such amendments will be enacted and become law, makes the availability of a legal remedy so doubtful, uncertain and hazardous, as to require and to entitle plaintiff to the equitable relief herein prayed for; and that plaintiff is advised and believes, and therefore represents, that should the proposed amendments become law, plaintiff will technically be deprived of any remedy at law by the express terms of the amendments, and, therefore, would be unable to test the validity of the assessment and collection of the tax in any proceeding whatever, unless the relief prayed for in this bill be granted, as aforesaid.

XVII.

That because of the fact said plaintiff has been advised and believes that said Agricultural Adjustment Act is unconstitutional, void and unenforcible, and that consequently the collection of a processing tax thereunder is unlawful and cannot be legally made and enforced, said plaintiff has concluded that such tax should not be paid further by it, and has refused to pay the said tax assessed, as aforesaid, for the said months of March, April and

May, 1935; as well as has plaintiff failed and refused to pay said tax, so remaining unpaid, for the additional reason it is unable to pay the same, and for the reason payment thereof by it, even if it could pay the same, would result in the utter ruin and consequent discontinuation of its pork packing business and the entire loss to plaintiff of the good will thereof.

That since said plaintiff has failed to pay the said tax assessed against it for the month of March, 1935, as aforesaid, said defendants have imposed a penalty of \$348.43 against plaintiff and added same to said tax for that month, besides the interest provided by the Act to be charged upon non-payment of the tax; and will under the Act impose and add to the processing tax now unpaid, as well as to all future taxes assessed against plaintiff from month to month under the Act, additional penalties and interest.

That plaintiff has been informed and believes, and therefore avers, that under the terms of the Act said corporation, its officers and agents participating in such failure and refusal to pay said tax, are subject to arrest and to the fine and imprisonment provided in subsection (b) of Section 19 of the Act, for and on account of the refusal to pay said taxes assessed for the said months of March, April and May, 1935, or any part thereof, together with the penalties and interest thereon.

XVIII.

That said defendants threaten to do the following enumerated things and to take the following enumerated action and proceedings against plaintiff and its said property, and will do the things and take the action and proceedings, aforesaid, against plaintiff and its property,

with the following results, unless defendants are, and each of them is, by order of Court enjoined and restrained from doing such things and taking such action and proceedings against plaintiff and its said property, and threaten to and will do the said things and take such action and proceedings in the premises under the assumed power and authority given by the Act, and as directed thereby, to-wit:

Impose against plaintiff not only the penalties for the non-payment of the tax for the months of March, April and May, 1935, but the interest on the tax and on the penalties, as well.

Levy and assess further processing taxes on the hogs slaughtered or processed by plaintiff in the future, and impose like penalties and charge like interest thereon against plaintiff.

Create and cast a lien on plaintiff's said property and make distraint upon the same for and on account of and as security for the payment and collection of said tax, and do all this not only on account of the said tax now due and payable, but on account of taxes which might in the future be levied and assessed against said plaintiff for hogs processed by it hereafter.

Under such distraint, or otherwise, sell said property of plaintiff in order to realize and collect said tax, whether now assessed against plaintiff and remaining unpaid, or whether assessed against it in the future, such property, aforesaid, consisting of said slaughter house and packing plant, machinery and equipment contained therein or used in connection therewith, rolling stock, inventoried manufactured products, stock on hand, bills receivable, choses in action and money on hand and bank accounts, all

owned and possessed by plaintiff, at the present time, and having a reasonable market value of over \$300,000.00.

And will otherwise demean themselves under the terms of said Act in relation to the processing tax assessed against plaintiff to the great and irreparable loss and damage of plaintiff.

XIX.

That the following are additional grounds and reasons why said defendants should be enjoined and restrained from doing the things and taking the action and proceedings, as aforesaid, against said plaintiff and its property, to-wit:

(a) That should said defendants create said lien upon said property, distrain and sell the same, as alleged, plaintiff will suffer irreparable loss and damage in that all of its said property, its business, including the pork packing business and the good will thereof, will be wholly swept away and lost to plaintiff; and thus destroy the aforesaid property and business of plaintiff and the good will thereof, all created and established by it over a period of nearly twenty-two years of ceaseless labor and efforts, without said plaintiff having any method or procedure under or by which it may have returned to it any of such property, good will and business, or any part thereof.

(b) That if said plaintiff should be relegated to its action or actions at law for the recovery and refund of any taxes paid in the future by plaintiff under the Act, assuming such action at law should be available to plaintiff, it would engender and result in a multiplicity of suits over and concerning the same subject matter between the same parties, in that since the tax becomes payable monthly the plaintiff would be compelled to commence and

maintain several actions in the premises for the recovery of the various installments of taxes paid; and that this proceeding would become and be most vexatious and exceedingly expensive to plaintiff.

(c) That said plaintiff has no remedy at law and is, therefore, compelled to bring its action in a Court of equity for the reasons alleged in paragraph XVI of this cause of action, the allegations of which paragraph are by reference hereby made a part of this subdivision (c).

XX.

Plaintiff further represents that heretofore it made request to said Collector of said District for an extension of time for the payment of said tax assessed against said plaintiff for the processing of hogs by it during the month of March, 1935, as aforesaid, but that defendants have recently notified said plaintiff that such request is denied, and that for that reason further time cannot be obtained by said plaintiff for the payment of said March tax; that said plaintiff even offered to make an attempt to furnish the Collector of Internal Revenue for such District with a bond in an amount sufficient to cover the said taxes for said three months, with the penalties and interest, but said Collector refused to accept the bond even if plaintiff could have furnished such bond; and that, therefore, plaintiff has exhausted all efforts of obtaining any consideration or relief from said defendants. Plaintiff offers to do all equity herein required of it by this Honorable Court.

WHEREFORE, plaintiff prays:

(a) That a writ of subpoena issue directed to said defendants requiring them to appear and answer this com-

plaint fully and truthfully, but not under oath, an answer under oath being hereby expressly waived.

(b) That it be determined and adjudged by this Court that an actual and immediate controversy exists between plaintiff on the one side and the defendants on the other concerning and in relation to the constitutionality and enforceability of the said Agricultural Adjustment Act and the consequential right to assess and collect the processing tax on hogs thereunder.

(c) That it be determined, declared and adjudged by this Court that said Agricultural Adjustment Act is unconstitutional, illegal and void for the reasons averred and shown in this bill of complaint; and that the processing tax assessed on hogs under the terms of the Act is unconstitutional, void and uncollectible likewise for the reasons averred in said bill of complaint.

(d) That the Court declare and adjudge that the tax assessed upon the processing of hogs for the months of March, April and May, 1935, and for such subsequent taxable periods as may properly be the subject of consideration by this Court, is invalid and void, in that as in this bill alleged, the rate of said tax is substantially in excess of the difference between the average current farm price and the fair exchange value for hogs for the taxable period in question, and that said rate has been maintained at this figure in total disregard of the formula expressly prescribed by the said Act; and that the taxes for said months, as well as any subsequent taxes assessed under such rate, are arbitrary, capricious and oppressive, and in violation of the Fifth Amendment to the Constitution of the United States.

(e) That this Court adjudge and declare void any lien upon any property of the plaintiff that may now exist for

the amount of any processing tax allegedly due from plaintiff under said Act, or for any interest, penalty or additions to such tax, and together with any costs that may have accrued in relation to the same.

(f) That a temporary as well as preliminary injunction be issued and granted by said Court to said plaintiff against said defendants, after notice and hearing if required by said Court, enjoining the defendants, and each of them, and the deputies, officers, servants and/or agents of said defendants, and of each of them, until the final hearing of the causes of action in this bill contained, or until further order of this Court made herein, from imposing, levying and assessing against the plaintiff any processing tax under and pursuant to said Agricultural Adjustment Act; from collecting or attempting to collect in any manner or by any proceeding the said processing tax assessed against plaintiff under the Act for hogs processed by it during the said months of March, April and May, 1935, and yet remaining unpaid, as well as from collecting or attempting to collect in any manner or by any proceeding any taxes hereafter levied and assessed against plaintiff for hogs processed hereafter; from imposing or attempting to impose upon the plaintiff any interest or penalties on account of its failure to pay said processing tax, or any part thereof; from creating or filing a lien upon and from levying upon or distraining or selling the slaughtering house and packing plant, machinery and appliances therein contained or used in connection therewith, rolling stock, manufactured products on hand,

stock in trade, choses in action, money on hand and bank accounts, or other property of the plaintiff, on account of the non-payment of said processing tax now due and unpaid, or hereafter to become due and payable under the terms and provisions of said Act; and from hereafter enforcing or attempting to enforce any penalties against the plaintiff for the non-payment of said taxes; all from the date of the issuance of said temporary injunction until the final decree of this Court in this action; and that upon the final hearing of this action said temporary injunction be extended and made permanent against said defendants, and against each of them, and the deputies, officers, servants and/or agents of said defendants, and of each of them.

(g) And that plaintiff may have all other and further relief agreeable to equity and good conscience.

STANDARD PACKING COMPANY

By T. P. BRESLIN

(Corporate Seal)

Its President

JOSEPH SMITH

GEO. M. BRESLIN

Attorneys for Plaintiff.

EXHIBIT "A"

(Pertinent sections of the Agricultural Adjustment Act)

The Policy of Congress:

"Sec. 2. It is hereby declared to be the policy of Congress

(1) To establish and maintain such balance between the production and consumption of agricultural commodities, and such marketing conditions therefor, as will re-establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco, shall be the prewar period, August, 1909,—July, 1914. In the case of tobacco, the base period shall be the postwar period, August, 1919-July, 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage, which was returned to the farmer in the prewar period, August 1909-July, 1914."

Reduction Contracts, Benefit Payments, and Licenses:

“Sec. 8. In order to effectuate the declared policy, the Secretary of Agriculture shall have power—

(1) To provide for reduction in the acreage or reduction in the production for market, or both, of any basic agricultural commodity, through agreements with producers or by other voluntary methods, and to provide for rental or benefit payments in connection therewith or upon that part of the production of any basic agricultural commodity required for domestic consumption, in such amounts as the Secretary deems fair and reasonable, to be paid out of any moneys available for such payments; and, in the case of sugar beets or sugar cane, in the event that it shall be established to the satisfaction of the Secretary of Agriculture that returns to growers or producers, under the contracts for the 1933-1934 crop of sugar beets or sugar cane, entered into by and between the processors and producers and/or growers thereof, were reduced by reason of the payment of the processing tax, and/or the corresponding floor-stocks tax, on sugar beets or sugar cane, in addition to the foregoing rental or benefit payments, to make such payments representing in whole or in part such tax, as the Secretary deems fair and reasonable, to producers who agree, or have agreed, to participate in the program for reduction in the acreage or reduction in the production for market, or both, of sugar beets or sugar cane. In the case of rice, the Secretary, in exercising the discretion conferred upon him by this section to provide for rental or benefit payments, is directed to provide in any agreement entered into by him with any rice producer pursuant to this section, upon such terms and conditions as the Secretary determines will best effectuate the declared policy of the Act, that the producer may pledge for

production credit in whole or in part his right to any rental or benefit payments under the terms of such agreement and that such producer may designate therein a payee to receive such rental or benefit payments. Under regulations of the Secretary of Agriculture requiring adequate facilities for the storage of any non-perishable agricultural commodity on the farm, inspection and measurement of any such commodity so stored, and the locking and sealing thereof, and such other regulations as may be prescribed by the Secretary of Agriculture for the protection of such commodity and for the marketing thereof, a reasonable percentage of any benefit payment may be advanced on any such commodity so stored. In any such case, such deduction may be made from the amount of the benefit payment as the Secretary of Agriculture determines will reasonably compensate for the cost of inspection and sealing, but no deduction may be made for interest. (As amended by Sec. 14 of Public—No. 213—73rd Congress, approved May 9, 1934, and further amended by Sec. 7 of Public—No. 20—74th Congress, approved March 18, 1935.

(2) After due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof, in the current of or in competition with, or so as to burden, obstruct, or in any way affect, interstate or foreign commerce. The making of any such agreement shall not be held to be in violation of any of the antitrust laws of the United States, and any such agreement shall be deemed to be lawful: PROVIDED, That no such agreement shall remain in force after the termination of this Act. For the purpose of carrying out any such agree-

ment the parties thereto shall be eligible for loans from the Reconstruction Finance Corporation under Section 5 of the Reconstruction Finance Corporation Act. Such loans shall not be in excess of such amounts as may be authorized by the agreements. (As amended by Public—No. 142—73rd Congress, approved April 7, 1934.)

(3) To issue licenses permitting processors, associations of producers, and others to engage in the handling, in the current of interstate or foreign commerce, of any agricultural commodity or product thereof, or any competing commodity or product thereof. Such licenses shall be subject to such terms and conditions, not in conflict with existing Acts of Congress or regulations pursuant thereto, as may be necessary to eliminate unfair practices or charges that prevent or tend to prevent the effectuation of the declared policy and the restoration of normal economic conditions in the marketing of such commodities or products and the financing thereof. The Secretary of Agriculture may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the Secretary suspending or revoking any such license shall be final if in accordance with law. Any such person engaged in such handling without a license as required by the Secretary under this section shall be subject to a fine of not more than \$1,000 for each day during which the violation continues.

(4) To require any licensee under this section to furnish such reports as to quantities of agricultural commodities or products thereof bought and sold and the prices thereof, and as to trade practices and charges, and to keep such systems of accounts, as may be necessary for the purpose of part 2 of this Title.

(5) No person engaged in the storage in a public warehouse of any basic agricultural commodity in the current of interstate or foreign commerce, shall deliver any such commodity upon which a warehouse receipt has been issued and is outstanding, without prior surrender and the provisions of this subsection shall, upon conviction, be punished by a fine of not more than \$5,000, or by imprisonment for not more than 2 years, or both. The Secretary of Agriculture may revoke any license issued under subsection (3) of this section, if he finds, after due notice and opportunity for hearing, that the licensee has violated the provisions of this subsection.”

Processing Taxes:

“Sec. 9. (a) To obtain revenue for extraordinary expenses incurred by reason of the national economic emergency, there shall be levied processing taxes as hereinafter provided. When the Secretary of Agriculture determines that rental or benefit payments are to be made with respect to any basic agricultural commodity, he shall proclaim such determination, and a processing tax shall be in effect with respect to such commodity from the beginning of the marketing year therefor next following the date of such proclamation; except that (1) in the case of sugar beets and sugarcane, the Secretary of Agriculture shall, on or before the thirtieth day after the adoption of this amendment, proclaim that rental or benefit payments with respect to said commodities are to be made, and the processing tax shall be in effect on and after the thirtieth day after the date of the adoption of this amendment, and (2) in the case of rice, the Secretary of Agriculture shall, before April 1, 1935, proclaim that rental or benefit payments are to be made with respect thereto, and the proces-

ing tax shall be in effect on and after April 1, 1935. In the case of sugar beets and sugarcane, the calendar year shall be considered to be the marketing year and for the year 1934, the marketing year shall begin January 1, 1934. In the case of rice, the period from August 1 to July 31, both inclusive, shall be considered to be the marketing year. The processing tax shall be levied, assessed, and collected upon the first domestic processing of the commodity, whether of domestic production or imported, and shall be paid by the processor. The rate of tax shall conform to the requirements of subsection (b). Such rate shall be determined by the Secretary of Agriculture as of the date the tax first takes effect, and the rate so determined shall, at such intervals as the Secretary finds necessary to effectuate the declared policy, be adjusted by him to conform to such requirements. The processing tax shall terminate at the end of the marketing year current at the time the Secretary proclaims that rental or benefit payments are to be discontinued with respect to such commodity. The marketing year for each commodity shall be ascertained and prescribed by regulations of the Secretary of Agriculture: PROVIDED, That upon any article upon which a manufacturers' sales tax is levied under the authority of the Revenue Act of 1932 and which manufacturers' sales tax is computed on the basis of weight, such manufacturers' sales tax shall be computed on the basis of the weight of said finished article less the weight of the processed cotton contained therein on which a processing tax has been paid.

(b) The processing tax shall be at such rate as equals the difference between the current average farm price for the commodity and the fair exchange value of the commodity; except that (1) if the Secretary has reason to

believe that the tax at such rate on the processing of the commodity generally or for any particular use or uses will cause such reduction in the quantity of the commodity or products thereof domestically consumed as to result in the accumulation of surplus stocks of the commodity or products thereof or in the depression of the farm price of the commodity, then he shall cause an appropriate investigation to be made and afford due notice and opportunity for hearing to interested parties, and if thereupon the Secretary finds that any such results will occur, then the processing tax on the processing of the commodity generally, or for any designated use or uses, or as to any designated product or products thereof for any designated use or uses, shall be at such rate as will prevent such accumulation of surplus stocks and depression of the farm price of the commodity, and (2) for the period from April 1, 1935, to July 31, 1935, both inclusive, the processing tax with respect to rice shall be at the rate of 1 cent per pound of rough rice, subject, however, to any modification of such rate which may be made pursuant to any other provision of this title. In computing the current average farm price in the case of wheat, premiums paid producers for protein content shall not be taken into account. In the case of rice, the weight to which the rate of tax shall be applied shall be the weight of rough rice when delivered to the place of processing. In the case of sugar beets or sugarcane the rate of tax shall be applied to the direct-consumption sugar, resulting from the first domestic processing, translated into terms of pounds or raw value according to regulations to be issued by the secretary of Agriculture, and the rate of tax to be so applied shall be the higher of the two following quotients: The difference between the current average farm price and the fair ex-

change value (1) of a ton of sugar beets and (2) of a ton of sugarcane, divided in the case of each commodity by the average extraction therefrom of sugar in terms of pounds of raw value (which average extraction shall be determined from available statistics of the Department of Agriculture); except that such rate shall not exceed the amount of the reduction by the President on a pound of sugar raw value of the rate of duty in effect on January 1, 1934, under paragraph 501 of the Tariff Act of 1930, as adjusted to the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, and/or the provisions of the Act of December 17, 1903, Chapter 1.

(c) For the purpose of part 2 of this title, the fair exchange value of a commodity shall be the price therefor that will give the commodity the same purchasing power, with respect to articles farmers buy, as such commodity had during the base period specified in section 2; and the current average farm price and the fair exchange value shall be ascertained by the Secretary of Agriculture from available statistics of the Department of Agriculture.”

Commodities:

“Sec. 11. As used in this title, the term “basic agricultural commodity” means wheat, cotton, field corn, hogs, rice, tobacco, and milk and its products, and any regional or market classification, type, or grade thereof; but the Secretary of Agriculture shall exclude from the operation of the provisions of this title, during any period, any such commodity or classification, type, or grade thereof if he finds, upon investigation at any time and after due notice and opportunity for hearing to interested parties, that the conditions of production, marketing, and consumption are

such that during such period this title can not be effectively administered to the end of effectuating the declared policy with respect to such commodity or classification, type, or grade thereof.”

Appropriation:

“Sec. 12 (a) There is hereby appropriated out of any money in the Treasury not otherwise appropriated, the sum of \$100,000,000 to be available to the Secretary of Agriculture for administrative expenses under this title and for rental and benefit payments made with respect to reduction in acreage or reduction in production for market under part 2 of this title. Such sum shall remain available until expended.

To enable the Secretary of Agriculture to finance, under such terms and conditions as he may prescribe, surplus reductions and production adjustments with respect to the dairy—and beef—cattle industries, and to carry out any of the purposes described in subsections (a) and (b) of this section (12) and to support and balance the markets for the dairy—and beef-cattle industries, there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of \$200,000,000; PROVIDED, That not more than 60 per centum of such amount shall be used for either of such industries.

(b) In addition to the foregoing, the proceeds derived from all taxes imposed under this title are hereby appropriated to be available to the Secretary of Agriculture for expansion of markets and removal of surplus agricultural products and the following purposes under part 2 of this title: Administrative expenses, rental and benefit payments, and refunds on taxes. The Secretary of Agriculture and the Secretary of the Treasury shall jointly

estimate from time to time the amounts, in addition to any money available under subsection (a) currently required for such purposes; and the Secretary of the Treasury shall, out of any money in the Treasury not otherwise appropriated, advance to the Secretary of Agriculture the amounts so estimated. The amount of any such advance shall be deducted from such tax proceeds as shall subsequently become available under this subsection.

(c) The administrative expenses provided for under this section shall, include, among others, expenditures for personal services and rent in the District of Columbia and elsewhere, for law books and books of reference, for contract stenographic reporting services and for printing and paper in addition to allotments under the existing law. The Secretary of Agriculture shall transfer to the Treasury Department, and is authorized to transfer to other agencies, out of funds available for administrative expenses under this title, such sums as are required to pay administrative expenses incurred and refunds made by such department or agencies in the administration of this title.”

Tax on Competing Commodities:

“Sec. 15 (d) The Secretary of Agriculture shall ascertain from time to time whether the payment of the processing tax upon any basic agricultural commodity is causing or will cause to the processors thereof disadvantages in competition from competing commodities by reason of excessive shifts in consumption between such com-

modities or products thereof. If the Secretary of Agriculture finds, after investigation and due notice and opportunity for hearing to interested parties, that such disadvantages in competition exist, or will exist, he shall proclaim such finding. The Secretary shall specify in this proclamation the competing commodity and the compensating rate of tax on the processing thereof necessary to prevent such disadvantages in competition. Thereafter there shall be levied, assessed, and collected upon the first domestic processing of such competing commodity a tax, to be paid by the processor, at the rate specified, until such rate is altered pursuant to a further finding under this section, or the tax or rate thereof on the basic agricultural commodity is altered or terminated. In no case shall the tax imposed upon such competing commodity exceed that imposed per equivalent unit, as determined by the Secretary upon the basic agricultural commodity.”

[Endorsed]: Filed Jul 2 ,1935. R. S. Zimmerman, Clerk; by Edmund L. Smith, Deputy Clerk.

[EXHIBIT B.]

[TITLE OF COURT AND CAUSE.]

ORDER TO SHOW CAUSE; AND TEMPORARY
RESTRAINING ORDER.

TO NAT ROGAN, both as an individual and as Collector of Internal Revenue for the Sixth District of California, and to his deputies, officers, servants and agents:

WHEREAS, in the above-named cause it has been made to appear by the verified bill of complaint and petition of plaintiff filed herein, that a restraining order preliminary to hearing upon application for a preliminary injunction is proper because of the allegations thereof of immediate and irreparable injury, loss and damage, and that prima facie the plaintiff is entitled to an order restraining temporarily the said defendant, Nat Rogan, individually and as Collector of Internal Revenue for said Sixth District of California, and his deputies, officers, servants and agents from doing the acts therein complained of and threatened to be committed.

NOW, THEREFORE, on motion of the plaintiff, by his attorneys, it is ordered that said Nat Rogan, both individually and as the Collector of Internal Revenue for the Sixth District of California, appear before the District Court of the United States, Southern District of California, Central Division, before Honorable H. A. Hollzer, Judge of said Court, at his Courtroom, in the Federal Building in Los Angeles, California, in said Dis-

trict, on the 12th day of July, 1935, at the hour of 10 o'clock A. M. of that day, then and there to show cause, if any there may be, why the preliminary injunction prayed for in said bill of complaint and petition and in

[Hollzer J.] not

said motion requested should \wedge issue.

And it appearing to the Court from the said bill of complaint and petition there is present danger that irreparable damage and injury will be caused plaintiff before notice can be served on defendant, said Nat Rogan, and a hearing had thereon, unless said Nat Rogan, individually and as said Collector, his deputies, officers, servants and agents, are restrained temporarily as herein set forth; for the reason as averred in the bill and petition certain taxes therein noted are due and payable and no further extensions for payment thereof can be obtained; that if said tax is not paid, and it cannot be paid and will not be paid for the reasons averred in the complaint, the said Collector of Internal Revenue threatens to and will in order to collect such tax distrain, levy upon and sell the property of plaintiff of a large value, thus irreparably destroying to plaintiff such property and the good will of its business described in the bill and petition; that plaintiff has no adequate and complete remedy at law for recovery as alleged in the bill and petition; that such injuries are irreparable to plaintiff because they cannot be compensated for in damages and may subject plaintiff to great penalties.

It is further ordered that said defendant, Nat Rogan, individually and as said Collector of Internal Revenue,

and all of his deputies, officers, servants and agents be and they are, and each of them is, restrained

(1) From assessing or attempting to assess against, or collecting or attempting to collect from plaintiff, under the Agricultural Adjustment Act, mentioned and described in plaintiff's bill of complaint and petition on file herein, the processing tax therein provided to be assessed against and collected from plaintiff on processing of hogs by it, whether such collecting or attempt to collect such tax by distraint, levy, sale and, or action at law or in equity;

(2) From collecting or attempting to collect said processing tax from said plaintiff in any other manner;

(3) From imposing or filing, or giving notice of intention to impose or file any lien upon the property of plaintiff, whether real or personal, because of the non-payment of said processing tax;

(4) From enforcing or attempting to enforce any penalties against the plaintiff for the non-payment of said processing tax; and,

(5) From enforcing or attempting to enforce any of the provisions of said Act applicable to plaintiff in relation to said processing tax.

This temporary restraining order shall remain in force for ten days from the time of entry hereof, or until further order of the Court.

This temporary restraining order is granted without notice because such injuries are irreparable and liable to occur before a hearing upon notice can be had.

It is further ordered that copies of this order certified under the hand of the Clerk and the seal of this Court be served upon said defendant, Nat Rogan, both individually and as Collector of Internal Revenue for said Sixth District of California; and that such copies, together with said bill of complaint and petition be served upon said defendant both individually and as said Collector on or before the 3rd day of July, 1935; and a copy of said bill and petition on said defendant, E. M. Cohee, both individually and as said Deputy Collector, on or before such date.

This order signed and issued this 2nd day of July, 1935, at 9:40 o'clock A. M.

By the Court.

Hollzer
Judge.

[Endorsed]: Filed Jul 2 1935 R. S. Zimmerman,
Clerk By F. Wayne Thomas, Deputy Clerk.

[EXHIBIT C.]

[TITLE OF COURT AND CAUSE.]

PRELIMINARY INJUNCTION.

This cause came on regularly to be heard this 12th day of July, 1935, before Honorable Harry A. Hollzer, Judge of the above entitled Court, on the application of said plaintiff for a preliminary injunction upon plaintiff's verified complaint and petition for declaratory judgment, due notice of the hearing of which application was given to defendant, Nat Rogan, both individually and as said Collector of Internal Revenue, and on the written motion of defendants to dismiss the bill of complaint and petition for declaratory judgment; and after hearing counsel for the respective parties, and the matters having been submitted to the Court for its consideration; and it appearing to the Court, and the Court finds that it is true, that certain processing taxes are due and payable from plaintiff under the terms of the Agricultural Adjustment Act, hereinafter more particularly described, and processing taxes will monthly in the future become due and payable from plaintiff under the terms of such Act; that there is immediate danger of great and irreparable loss and injury being caused to plaintiff if the preliminary restraining order is not issued herein as prayed for in said bill of complaint and petition for the reason that there is immediate danger that said defendant, Nat Rogan, either individually or as Collector of Internal Revenue, will proceed under said Act to collect from said plaintiff said taxes, and in so doing will distrain, levy upon and sell the property of plaintiff described in said bill of complaint and petition of a large value, thus causing to plaintiff an irreparable loss of such property and the good will of plain-

tiff's business likewise mentioned in said bill of complaint and petition; and that for each month said plaintiff fails or refuses to pay the processing taxes payable for that month under the Act, plaintiff, together with its officers and agents participating in such violation will be liable every month such violation occurs to the infliction of the great penalties provided by the Act; that plaintiff has no plain, speedy and adequate remedy at law in the premises; that if said restraining order is not so issued there will necessarily result a multiplicity of suits for the recovery of the taxes paid by plaintiff each month under the Act; and that for all these reasons a preliminary restraining order should issue herein against defendant, Nat Rogan, both individually and as said Collector of Internal Revenue, as prayed for in said bill of complaint and petition.

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1st. That said defendant, Nat Rogan, both individually and as Collector of Internal Revenue for the Sixth District of California, his officers, agents, servants, employees and attorneys and those in active concert or participation with him, and who shall, by personal service or otherwise, have received actual notice hereof, shall be and they are and each of them is hereby enjoined and restrained from imposing, levying, assessing, demanding or collecting, or attempting to impose, levy, assess or collect, against or from said plaintiff, Standard Packing Company, a corporation, any processing taxes now due from and payable by plaintiff under and pursuant to the said Agricultural Adjustment Act adopted by the 73rd Congress of the United States, and being

“An Act to relieve the existing economic emergency by increasing agricultural purchasing power, to raise revenue

for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of Joint Stock Land Banks, and for other purposes,”

which Act was approved on May 12, 1933, and all Acts amendatory thereof; from imposing, levying, assessing, demanding or collecting, or attempting to impose, levy, assess or collect, against or from said plaintiff any taxes hereafter to become due from and payable by plaintiff and arising under the terms of said Act on hogs processed by it; from imposing or collecting or attempting to impose or collect upon or from said plaintiff any interest or penalties on account of plaintiff's failure to pay any of said processing taxes payable by plaintiff under the force of the Act, whether now due or hereafter to become due from plaintiff; from imposing or filing, or giving notice of intention to impose or file any lien upon the property of plaintiff, whether real or personal, because of the non-payment by plaintiff of any of said processing taxes whether now due or hereafter to become due from plaintiff under the Act; from levying upon, distraining or selling plaintiff's slaughtering house, packing plant, the machinery and appliances therein contained and used in connection therewith, rolling stock, manufactured products on hand, stock in trade, choses in action, money on hand and money in bank, or any of such property, or any other property of plaintiff, on account or by reason of such non-payment of said or any of said processing taxes,

whether now due or hereafter to become due from and payable by said plaintiff under said Act; all from the date of the issuance of this preliminary injunction until the final decree of the Court in this case, or until further order of this Court;

2nd. This injunction is granted upon the condition that the plaintiff shall furnish security to the defendant, Nat Rogan, as Collector of Internal Revenue, as aforesaid, by undertaking with sufficient sureties to be approved by the Court in the penal sum of \$25,000.00 conditioned that plaintiff will pay all said processing taxes assessed and charged against plaintiff under said Act, together with all costs assessed by the Court in the event it is finally decided this restraining order was improperly issued or this action is dismissed; provided, that in lieu of such undertaking, plaintiff shall have and is hereby given the option of depositing the said sum of \$25,000.00 in lawful money of the United States with the Clerk of the above entitled Court, subject to like conditions; and upon the further condition that said plaintiff shall continue to file with said Nat Rogan as said Collector of Internal Revenue monthly returns on all hogs processed by it, as required by said Act, such returns to be made on the forms provided therefor by the said Collector of Internal Revenue;

3rd. The Court, however, reserves the right to require additional security from plaintiff from time to time as may seem to the Court necessary to protect the defendant, Nat Rogan, as said Collector of Internal Revenue, or to modify this order in any part or particular, after notice to the parties hereto; and

4th. That the said motion of defendants to dismiss plaintiff's bill of complaint and petition for declaratory relief is denied; and defendants are allowed twenty days after notice hereof within which to answer said bill of complaint and petition for declaratory relief.

DATED at Los Angeles, California, this 31 day of July, 1935.

By the Court.

HOLLZER

Judge of said District Court.

Approved as to form:

CLYDE THOMAS,

Asst. U. S. Atty.

[Endorsed]: Filed Jul 31, 1935 R. S. Zimmerman,
Clerk By Edmund L. Smith, Deputy Clerk.

[EXHIBIT D.]

[TITLE OF COURT AND CAUSE.]

PETITION FOR APPEAL

To the HONORABLE PAUL J. McCORMICK, Judge
of the District Court of the United States, Southern
District of California, Central Division:

STANDARD PACKING COMPANY, a corporation,
your petitioner, who is the plaintiff in the above entitled
cause, considering itself aggrieved by the order of said
Court made and entered herein on the 30th day of August,
1935, vacating and dissolving the preliminary injunction
theretofore issued by said Court on the 31st day of July,
1935, in said cause, does hereby appeal from said order to
the United States Circuit Court of Appeals for the Ninth
Circuit, for the reasons specified in the assignment of
errors, which is filed herewith; and prays that this appeal
may be allowed, and that pursuant thereto citation issue
as provided by law, and that a transcript of the record,
proceedings and papers in this case, duly authenticated,
may be sent to the said Circuit Court of Appeals, all to
the end that the errors complained of may be corrected.

Petitioner tenders bond in such amount as this Honor-
able Court may require of it in order to perfect its appeal.

And desiring to supersede the execution of the said
order or decree, petitioner tenders bond in such amount
as the Court may require for such purpose; and prays that
with the allowance of the appeal herein a supersedeas be

issued staying the dissolution of said preliminary injunction pending appeal, and restoring such injunction during the pendency of such appeal.

DATED, September 14th, 1935.

Joseph Smith and
George M. Breslin

Attorneys for Plaintiff.

[Endorsed]: Received copy of the within this 14th day of Sept 1935 Clyde Thomas Asst U. S. Atty.

Filed Sept 14 1935 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

MEMORANDUM OF CONCLUSIONS.

July 27, 1935.

By this suit plaintiff seeks both declaratory relief and also an injunction restraining the defendant Collector from enforcing collection of certain processing taxes levied pursuant to the provisions of the Agricultural Adjustment Act of May 12, 1933, and the regulations adopted thereunder. An order to show cause and temporary restraining order having been issued, the defendant collector has appeared and moved to dismiss the case. No issue has been raised as to any of the facts alleged in the verified complaint nor have any objections been interposed to the application for an injunction pendente lite, except such as are included in said motion to dismiss.

It appearing that there is grave doubt as to the constitutionality of the Act in question, particularly the provisions thereof applicable to the pending cause (See Schecter Poultry Corporation case decided by the Supreme Court May 27, 1935, also William Butler, et al, vs. United States, et al, decided by the United States Circuit Court of Appeals, First Circuit, July 13, 1935; Gold Medal Foods Inc. et al vs. Landry, etc, recently decided by the District Court in Minnesota); and

It appearing that there are unusual and exceptional conditions necessitating the issuance of an injunction, including the fact that the plaintiff will be driven to the

necessity of a multiplicity of suits if relegated to its remedy at law to protect its rights, (See *Lee v. Bickell*, 292 U. S. 415, 421).

This Court concludes that an injunction pendente lite should issue and that the motion to dismiss must be denied.

It further appearing that the facts alleged entitle plaintiff to declaratory relief (See *Black v. Little*, 8 Fed. Sup. 867 and cases therein cited),

The Court concludes that upon this additional ground the motion to dismiss must be denied.

[EXHIBIT E.]

[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT:

Now comes the plaintiff, STANDARD PACKING COMPANY, a corporation, and files the following assignment of errors upon which plaintiff will rely in the prosecution of the appeal from the order of the above entitled Court made and entered herein on the 30th day of August, 1935, vacating and dissolving the preliminary injunction theretofore issued by said Court on the 31st day of July, 1935, in the above entitled cause:

I.

The Court erred in granting defendants' motion to vacate said preliminary or temporary injunction.

II.

The Court erred in making its order vacating such preliminary or temporary injunction.

III.

The Court erred in holding that plaintiff's bill of complaint and petition for declaratory judgment and injunction did not state facts sufficient to justify injunctive relief to plaintiff.

IV.

The Court erred in holding that the decision rendered by the United States Circuit Court of Appeals for the Ninth Circuit in the case of Fisher Flouring Mills Company v. Collector, and cases consolidated therewith, de-

cided August 15, 1935, was binding upon the above entitled District Court and required the granting of the motion to vacate said preliminary injunction irrespective of the facts alleged in plaintiff's bill of complaint and petition for declaratory judgment and injunction, admitted by the defendants to be true, and which facts are wholly different and unlike the facts involved in the said Fisher Flouring Mills Company v. Collector and consolidated cases.

V.

The Court erred in holding that the said decision of the United States Circuit Court of Appeals for the Ninth Circuit required the granting of the motion to vacate the said preliminary injunction.

VI.

The Court erred in holding that the plaintiff was not entitled to any equitable or injunctive relief.

VII.

The Court erred in holding that plaintiff was not entitled to the preliminary injunction.

VIII.

The Court erred in holding that the plaintiff has a plain, speedy, adequate and complete remedy at law.

IX.

The Court erred in holding that the dissolution of the preliminary injunction heretofore granted by the Court will not result in a multiplicity of suits.

X.

The Court erred in holding that the dissolution of said preliminary injunction would not result in great and irreparable loss and damage to plaintiff.

XI.

The Court erred in holding that the dissolution of the preliminary injunction would not subject plaintiff and its officers and agents to heavy, extraordinary and inequitable penalties, both of a criminal and civil nature.

XII.

The Court erred in holding the Court was without jurisdiction to restrain or enjoin the collection of the processing taxes involved in this cause.

XIII.

The Court erred in holding that Section 3224 of the Revised Statutes of the United States prohibited the maintaining in any Court and particularly in the said District Court, of a suit for the purpose of restraining the assessment or collection of a Federal tax, and particularly said processing taxes assessed against plaintiff under the Agricultural Adjustment Act involved in this cause.

XIV.

The Court erred in holding that since the preliminary injunction was entered, the grounds alleged by plaintiff, and upon which such injunction was granted, were at the time of the dissolution of said injunction no longer in existence, because of the adoption by the Congress of H. R. 8492, entitled "An Act to Amend the Agricultural Adjustment Act, and for other purposes, approved August 24, 1935".

XV.

The Court erred in holding that the preliminary injunction in this cause was granted on the basis that the bill amending said Act as originally passed by the House of Representatives denied the right to litigate the legality of processing taxes in actions at law.

XVI.

The Court erred in holding that the plaintiff was guilty of laches in bringing its action herein in that it paid the said processing tax each month for a period of a year and a half prior to the filing of this action without objection or protest or any action whatsoever to stop the collection of such tax.

XVII.

The Court erred in holding that the immediate stopping of the collection of said tax by said injunction, would greatly embarrass the Government in its financial arrangements in reference thereto.

WHEREFORE, plaintiff prays that the said order vacating and dissolving said preliminary injunction be reversed and set aside, and that the said Circuit Court of Appeals for the Ninth Circuit render a proper order and decree in said cause; that such preliminary injunction be restored to its full force and effect as though the same had not been vacated; and that plaintiff may have such other and further relief as to the Court may seem just and proper in the premises.

DATED, September 14th, 1935.

JOSEPH SMITH and
GEORGE M. BRESLIN
Attorneys for said plaintiff and
Appellant.

[Endorsed]: Received copy of the within this 14th day of Sept., 1935. Clyde Thomas, Attorney for Asst. U. S. Atty.

Filed Sept. 14, 1935. R. S. Zimmerman, clerk; by Edmund L. Smith, deputy clerk.

[EXHIBIT F.]

[TITLE OF COURT AND CAUSE.]

ORDER ALLOWING APPEAL

On motion of JOSEPH SMITH and GEORGE M. BRESLIN, attorneys for Standard Packing Company, a corporation, said plaintiff.

IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order of said District Court made and entered herein on the 30th day of August, 1935, vacating and dissolving the preliminary injunction theretofore issued by said Court on the 31st day of July, 1935, in said cause, be and the same is hereby allowed; and that a certified transcript of the record, proceedings and documents herein be transmitted to said Circuit Court of Appeals for the Ninth Circuit in the manner and as required by law and the rules of said Circuit Court of Appeals.

In view of the recent action of said Circuit Court of Appeals for the Ninth Circuit in the matter of petitions submitted to it for the granting of injunctions pending appeal to such Circuit Court in other causes involving processing taxes under the Act of Congress popularly known as Agricultural Adjustment Act, it is the expression of this Court that any relief in the form of super-sedeas, whereby the preliminary injunction so dissolved by order of this Court be restored to full force and effect during the pendency of this appeal, should be sought by

plaintiff by application to the United States Circuit Court of Appeals for the Ninth Circuit for injunction pending appeal, if the plaintiff desires so to do.

IT IS FURTHER ORDERED that the cost bond on appeal be fixed at the sum of \$250.00.

DATED, September 14th, 1935.

Paul J. McCormick
Judge of said District Court.

[Endorsed]: Received copy of the within this 14 day of Sept., 1935. Clyde Thomas, Attorney for Asst. U. S. Atty.

Filed Sept. 14, 1935. R. S. Zimmerman, clerk; by Edmund L. Smith, deputy clerk.

[EXHIBIT G.]

[TITLE OF COURT AND CAUSE.]

SUPPLEMENT TO BILL OF COMPLAINT AND
PETITION FOR DECLARATORY JUDGMENT
AND INJUNCTION.

Now comes STANDARD PACKING COMPANY, a corporation, the plaintiff in the above entitled action and, by leave of the above entitled Court first had, files this its Supplement to its Bill of Complaint and Petition for Declaratory Judgment and Injunction on file herein, and to each count or cause of action therein contained and alleged, and respectfully alleges and represents as follows:

I.

Since the commencement of said action, to-wit, on August 14, 1935, the House of Representatives passed a Bill (H. R. 8492) entitled "A Bill to amend the Agricultural Adjustment Act, and for other purposes." On August 15, 1935, the Senate passed the said Bill. On August 24, 1935, the President signed the said Bill. Under the provisions of said Amendatory legislation it is provided, among other things:

"(a) Section 12. Subsection (b) of the Agricultural Adjustment Act, as amended, is amended to read as follows:

Specific Tax Rates

(2) In the case of wheat, cotton, field corn, hogs, peanuts, tobacco, paper, and jute, and (except as provided in paragraph (8) of this subsection) in the case of sugarcane

and sugar beets, the tax on the first domestic processing of the commodity generally or for any particular use, or in the production of any designated product for any designated use, shall be levied, assessed, collected, and paid at the rate prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of this amendment, during the period from such date to December 31, 1937, both dates inclusive.”

The purported rate of tax on the first domestic processing of hogs as prescribed by the regulations of the Secretary of Agriculture in effect on the date of the adoption of said amendment was \$2.25 per hundredweight, live weight. By other provisions of said amendatory Act said tax rate may be increased or decreased according to methods therein provided, but no such change has been made to the date hereof.

“(b) Section 32. The Agricultural Adjustment Act as amended, is amended by adding after Section 20, the following new section:

Sec. 21 (a). No suit, action, or proceeding (including probate, administration, receivership, and bankruptcy proceedings) shall be brought or maintained in any court if such suit, action, or proceeding is for the purpose or has the effect (1) of preventing or restraining the assessment or collection of any tax imposed or the amount of any penalty or interest accrued under this title on or after the date of the adoption of this amendment, or (2) of obtaining a declaratory judgment under the Federal Declaratory Judgments Act in connection with any such tax or such amount of any such interest or penalty. In probate, administration, receivership, bankruptcy, or other similar proceedings, the claim of the United States for

any such tax or such amount of any such interest or penalty, in the amount assessed by the Commissioner of Internal Revenue, shall be allowed and ordered to be paid, but the right to claim the refund or credit thereof and to maintain such claim pursuant to the applicable provisions of law, including subsection (d) of this section, may be reserved in the court's order.

(b) The taxes imposed under this title, as determined, prescribed, proclaimed and made effective by the proclamations and certificates of the Secretary of Agriculture or of the President and by the regulations of the Secretary with the approval of the President prior to the date of the adoption of this amendment, are hereby legalized and ratified, and the assessment, levy, collection, and accrual of all such taxes (together with penalties and interest with respect thereto) prior to said date are hereby legalized and ratified and confirmed as fully to all intents and purposes as if each such tax had been made effective and the rate thereof fixed specifically by prior Act of Congress. All such taxes which have accrued and remain unpaid on the date of the adoption of this amendment shall be assessed and collected pursuant to section 19, and to the provisions of law made applicable thereby. Nothing in this section shall be construed to import illegality to any act, determination, proclamation, certificate, or regulation of the Secretary of Agriculture or of the President done or made prior to the date of the adoption of this amendment.

* * * *

(d) (1) No recovery, recoupment, setoff, refund or credit shall be made or allowed of, nor shall any counter claim be allowed for, any amount of any tax, penalty, or

interest which accrued before, on, or after the date of the adoption of this amendment under this title (including any overpayment of such tax), unless after a claim has been duly filed, it shall be established, in addition to all other facts required to be established, to the satisfaction of the Commissioner of Internal Revenue, and the Commissioner shall find and declare of record, after due notice by the Commissioner to such claimant and opportunity for hearing, that neither the claimant nor any person directly or indirectly under his control or having control over him, has, directly or indirectly, included such amount in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner, or included any part of such amount in the charge or fee for processing, and that the price paid by the claimant or such person was not reduced by any part of such amount. In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. The provisions of this subsection shall not apply to any refund or credit authorized by subsection (a) or (c) of section 15, section 16 or section 17 of this title, or to any refund or credit to the processor of any tax paid by him with respect to the provisions of section 317 of the Tariff Act of 1930.

(2) In the event that any tax imposed by this title is finally held invalid by reason of any provision of the Constitution, or is finally held invalid by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, there shall

be refunded or credited to any person (not a processor or other person who paid the tax) who would have been entitled to a refund or credit pursuant to the provisions of subsections (a) and (b) of Section 16, had the tax terminated by proclamation pursuant to the provisions of Section 13, and in lieu thereof, a sum in an amount equivalent to the amount to which such person would have been entitled had the Act been valid and had the tax with respect to the particular commodity terminated immediately prior to the effective date of such holding of invalidity, subject, however, to the following condition: Such claimant shall establish to the satisfaction of the Commissioner, and the Commissioner shall find and declare of record, after due notice by the Commissioner to the claimant and opportunity for hearing, that the amount of the tax paid upon the processing of the commodity used in the floor stocks with respect to which the claim is made was included by the processor or other person who paid the tax in the price of such stocks (or of the material from which such stocks were made). In any judicial proceeding relating to such claim, a transcript of the hearing before the Commissioner shall be duly certified and filed as the record in the case and shall be so considered by the court. Notwithstanding any other provision of law:

(1) No suit or proceeding for the recovery, recoupment, set-off, refund or credit of any tax imposed by this title, or of any penalty or interest, which is based upon the invalidity of such tax by reason of any provision of the Constitution or by reason of the Secretary of Agriculture's exercise or failure to exercise any power conferred on him under this title, shall be maintained in any court, unless prior to the expiration of six months after the date on which such tax imposed by this title has been

finally held invalid a claim therefor (conforming to such regulations as the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, may prescribe) is filed by the person entitled thereto; (2) no such suit or proceeding shall be begun before the expiration of one year from the date of filing such claim unless the Commissioner renders a decision thereon within that time, nor after the expiration of five years from the date of the payment of such tax, penalty, or sum, unless suit or proceeding is begun within two years after the disallowance of the part of such claim to which such suit or proceeding relates. The Commissioner shall within 90 days after such disallowance notify the taxpayer thereof by mail.

(3) The District Courts of the United States shall have jurisdiction of cases to which this subsection applies, regardless of the amount in controversy, if such courts would have had jurisdiction of such cases but for limitations under the Judicial Code, as amended, on jurisdiction of such courts based upon the amount in controversy.

* * * * *

(g) The provisions of section 3226, Revised Statutes, as amended, are hereby extended to apply to any suit for the recovery of any amount of any tax, penalty, or interest, which accrued, before, on, or after the date of the adoption of this amendment under this title (whether an overpayment or otherwise), and to any suit for the recovery of any amount of tax which results from an error in the computation of the tax or from duplicate payments of any tax, or any refund or credit authorized by subsection (a) or (c) of section 15, section 16, or section 17 of this title or any refund or credit to the processor of any tax paid by him with respect to articles exported pursuant to the provisions of section 317 of the Tariff Act of 1930."

That pursuant to the provisions of said Agricultural Adjustment Act, and the proclamations and regulations issued by the Secretary of Agriculture, and regulations promulgated by the Secretary of the Treasury thereunder, the plaintiff, within the time provided by said Act and regulations, filed with said Nat Rogan, as said Collector of Internal Revenue returns for the respective months of June and July, both in 1935, showing the amount of processing tax claimed to be payable by plaintiff under the terms of said Agricultural Adjustment Act, with respect to the processing of hogs by it during the said months of June and July; that the said amounts so payable by plaintiff as disclosed in said returns, was for the said month of June, the sum of \$1360.30; for the said month of July, the sum of \$2251.26; that the payment of the said tax with respect to hogs processed during said month of June, 1935, became due on or before July 31, 1935, under the provisions of Articles 11 (b) and 26 (a) of Treasury Regulation 81, and the said tax for the said month of July became due on or before August 31, 1935, under said provisions of the said Regulation; that, while said plaintiff has not made its return to said Collector of the amount of hogs processed by it during the month of August, 1935, the amount of tax claimed to be payable by it under said Act on the amount of hogs processed by plaintiff during the said month of August is the sum of \$2294.25, and that such last mentioned tax will become payable under said Act on or before September 30, 1935.

III.

That plaintiff has been advised by counsel and believes and therefore avers that the defendant Collector would have proceeded to collect from plaintiff, not only the processing taxes payable by plaintiff under the provisions of

said Agricultural Adjustment Act, and remaining unpaid, for the months of March, April and May, all in the year 1935, alleged in the original bill of complaint, etc., on file herein, but all other of such taxes thereafter due and payable by plaintiff under said Act, except for the issuance of the preliminary injunction heretofore issued herein, and that said defendant Collector will proceed to collect by summary process, including distraint, seizure and sale of the property of plaintiff, unless restrained from so doing.

IV.

That unless the plaintiff pays the said processing taxes, whether now existing and determined or hereafter to be determined under the provisions of said Agricultural Adjustment Act on hogs processed by it, or secures the equitable relief in said original bill of complaint, etc., and herein sought, it and its officers and agents participating in such failure or refusal of payment thereof will be subject to the great and unusual criminal penalties provided in Section 1114 (a) of the Revenue Act of 1926 (44. Stat. 116, U. S. C. Rule 26, Sec. 1265) and Section 19 (b) of the Agricultural Adjustment Act as amended, as well as will said plaintiff be subject to the great and extraordinary penalties provided by law.

V.

That plaintiff is advised by counsel, believes and therefore avers that the assessment and collection from the plaintiff of the said taxes, including those accrued before and after August 24, 1935, the date of the enactment of said amendatory Act, would be unconstitutional and illegal for the reason that the Agricultural Adjustment Act and the amendments thereto, under which said taxes respectively accrued and under which collection thereof is immi-

ment and will be attempted, violate the Constitution of the United States in the following, as well as in other particulars:

(a) The imposition of the tax of the character and for the purposes prescribed by said Agricultural Adjustment Act and the amendments thereto is not within the taxing power of Congress as defined by Article I, Section 8 of the Constitution;

(b) Said Act and the amendments thereto represent an attempt on the part of Congress to exercise powers which are reserved to the States respectively or the people by the Tenth Amendment to the Constitution;

(c) The imposition of processing taxes provided by said Act and the amendments thereto will deprive this plaintiff of its property without due process of law in violation of the Fifth Amendment to the Constitution;

(d) Said so-called taxes are not in fact or in law taxes but on the contrary are an attempted, illegal and unconstitutional exaction from plaintiff of its property without due process of law and in contravention of the aforesaid sections and amendments of the Constitution and each of them, for the benefit of a class and not to pay the debts or provide for the common defense or general welfare of the United States;

(e) The expressed purpose of the Agricultural Adjustment Act as it affects and appertains to this plaintiff is to regulate and control the production and processing of agricultural commodities, and particularly the raising and processing of hogs. Neither the raising nor the processing of hogs by the plaintiff constitutes directly or indirectly, or so affects, interstate commerce, as to vest in the Congress power to regulate such raising or pro-

cessing under the provisions of Article I, Section 8, Clause 3 of the Constitution;

(f) Said Act, as in effect prior to the 24th day of August, 1935, and as amended by the amendments approved by the President on said last mentioned date delegated and still does delegate to an administrative officer legislative powers conferred exclusively on Congress by Article I, Section 1, Article I, Section 7, and Article I, Section 8, Clause 18 of the Constitution. Section 21 (b) of the amendatory act approved August 24, 1935, which purports to legalize and ratify the so-called taxes determined, prescribed and proclaimed by the Secretary of Agriculture acting pursuant to the legislative powers thus delegated to him and to legalize and ratify the assessment, levy, collection and accrual of such taxes is invalid and ineffective;

(g) Said Act, as in effect prior to the said 24th day of August, 1935, and as amended by the amendments approved by the President on said last mentioned date, attempts to control and regulate business and commerce purely intrastate in contravention of Article I, Section 8, Clause 3 of the Constitution, as well as the Tenth Amendment thereto.

VI.

That Section 21 of the Agricultural Adjustment Act as amended purports to allow the recovery and refund of processing taxes illegally collected, upon compliance with certain conditions therein mentioned. The meaning, purport and intent of said conditions are so uncertain, vague and ambiguous as to be legally and factually impossible to determine, with the result that the remedies supposedly made available to the plaintiff by said section are not

plain, adequate or complete. By reason of the uncertainty, vagueness and ambiguity of the meaning, purport and intent of said conditions and restrictions upon the plaintiff's legal remedy the plaintiff is entitled to the equitable relief herein sought.

VII.

That the legal remedy which said Section 21 of the Agricultural Adjustment Act as amended purports to allow is neither plain, adequate nor complete for the following additional reasons:

(a) Under paragraph (d) of said Section 21, plaintiff will be precluded from securing refunds of any taxes heretofore or hereafter paid by it, even though such taxes are unconstitutional or invalid, unless the plaintiff establishes that it has not, either directly or indirectly, included the amount of such tax in the price of the article with respect to which it was imposed or of any article processed from the commodity with respect to which it was imposed, or passed on any part of such amount to the vendee or to any other person in any manner. As a first domestic processor of a basic agricultural commodity (hogs), plaintiff is made liable in the first instance for the prescribed processing taxes and is required to pay said taxes out of its own funds. When paid by plaintiff, said taxes become part of the cost to it of the product which it ultimately sells to its customers. Said taxes, however, are imposed upon the first domestic processing of hogs, rather than upon the sale of the articles resulting from such processing. In the business of plaintiff, to-wit, the processing of hogs, the processing tax is levied upon the live weight of the hogs at the present rate of \$2.25 per hundredweight. In such processing of hogs by plaintiff not more than

seventy-five per cent of said live hogs is usable and sold by plaintiff in its said business, and such part of said hogs so usable and so sold in said business is divided into numerous and separate portions and products, including ham, sausage, bacon, lard, loin, hocks, feet, heads, shoulders, trimmings, casings, neck, tails and other portions; some of which said products are pickled and others smoked, and yet others of which go through sundry other processes, and some are sold as fresh meat. It would be and is virtually impossible to allocate the proportional part of said processing tax so levied on the live weight of the hog before processing to each of said portions and products thereof after processing; and further it is impossible to earmark and follow the different products of each hog after processing or to show or establish the cost of each of said various products therefrom or the sale price thereof for the reason that these various portions of many hogs so processed are, of necessity in said business, comingled and stored together until a sale of some portion of such comingled products is available and different products aforesaid are necessarily marketed at different times and at greatly varied prices, and because of which it is factually impossible to determine the sale price of the products of any one dressed hog as a whole.

Furthermore, plaintiff sells the products processed from hogs on the open market and in competition with other processors over the State of California, as well as other processors, who ship into and sell in said state like pork products. In the sale of such products plaintiff has not and does not add or include the processing tax as a separate item on its invoices. As a practical matter plaintiff would be precluded from doing so by its inability accurately to allocate any particular part of the tax to any

particular product or quantity thereof, and by the heavy penalties imposed by Section 20 of the Agricultural Adjustment Act, as amended, upon misstatements of the amount of tax allocated to any particular product.

Plaintiff avers, however, that it has been unable to pass all of said processing tax on to the ultimate consumer for the reasons alleged in its original bill of complaint, etc., and that the result of the operation and enforcement of said Agricultural Adjustment Act has been to cause and is causing plaintiff great inconvenience, embarrassment, loss and damage.

Due to economic and competitive conditions prevailing from time to time in the markets in which plaintiff buys hogs and sells the products therefrom, and to the perishable character of plaintiff's products, by reason of which it is upon occasions forced to make immediate and disadvantageous sales, it sometimes sells its said products at a loss and sometimes at a profit, and will necessarily continue to do so. Said Section 21(d) does not provide whether the price received by the plaintiff upon the sale of one of its products is to be allocated first to the full reimbursement of the processing tax payable by plaintiff, or first to the full reimbursement to plaintiff of its costs other than said taxes, or pro rata to all of plaintiff's costs. In the ordinary course of plaintiff's business it would be absolutely impossible to establish in the case of any particular portion or quantity of said products whether the tax with respect thereto was or was not passed on by plaintiff to its customers, and in particular it would be impossible to establish that any definite and ascertainable part of such tax was or was not so passed on. The assumption that a particular pork product, or any specified quantity thereof bears any

particular part of the tax is wholly arbitrary and is not susceptible of proof. Moreover, it cannot be ascertained with certainty, in respect of any particular sale of one of plaintiff's products, whether such sale resulted in a profit or a loss. Plaintiff's profit and loss experience can only be determined as the net result of its business over a substantial period of time. Thus the condition that plaintiff establish that no part of the amount of its tax has been passed on in any manner is one impossible of fulfillment with respect to any specific tax payment.

(b) In order to recover any processing taxes, if hereafter paid by it, plaintiff will be required to show under Section 21(d) of said Act as amended that the price paid by it for the hogs processed by plaintiff was not reduced by the amount of such processing tax. Plaintiff in the past has paid and for the future necessarily will pay for its purchases the competitive open market prices in effect at the time thereof. The market price of such commodity is, has been and will continue to be a fluctuating price depending upon market conditions in respect of supply, demand, costs of production, competition and other factors prevailing from time to time. The processing tax payable by plaintiff with respect to any hogs which it buys is only one of many factors affecting the market price of such commodity at any given time. The effect of such single processing tax factor upon the market price of hogs can at no time be isolated and determined. It is not possible for the plaintiff to show in respect of any purchase whether, or to what extent, the market price thereof was affected by said tax.

(c) The fact of such passing on of the said tax to the vendee or passing back of the said tax to the vendor

is not a fact that is merely difficult of ascertainment. It is a fact that it is impossible to determine, as herein alleged. Any attempt to define it is speculative and imaginary. By reason of the fact that plaintiff's right to receive a refund of taxes paid by it is limited by said requirement that it shall establish facts not susceptible of proof, said remedy is wholly illusory, unreasonable, fictitious and is not a plain, adequate and complete remedy at law, and is no remedy at all.

(d) Said Section 21(d) is susceptible of the construction that if any part of the processing tax has been deducted from the price paid by the plaintiff for its hogs or added to the price received by the plaintiff for its products processed from hogs, then the entire right to recover the tax is taken away, even if the amount so deducted from the price paid by the plaintiff for the hogs or so added to the price received by the plaintiff from its dressed products is but a small part of the total tax. So construed said section is arbitrary and unreasonable and in practical effect denies to the plaintiff all right to recover such portion of the processing tax, the burden of which was actually borne by it, all in violation of the said Fifth Amendment.

(e) The above conditions imposed upon the right of the plaintiff to recover taxes paid by it must, under said Section 21(d) be established to the satisfaction of the Commissioner of Internal Revenue, and apparently his determination regarding the existence of such conditions is not subject to judicial review. The transcript of the hearing before the Commissioner of Internal Revenue is the sole record of the case on appeal to the courts. The effect of said section is therefore to limit the function of the judicial review to the determination of whether there

was any evidence submitted to the Commissioner of Internal Revenue tending to support the findings of the Commissioner. Thus construed said Section 21(d) deprives the plaintiff of its property without due process of law in violation of the Fifth Amendment aforesaid.

VIII.

Under said Section 21(d) of said Agricultural Adjustment Act as amended, if the processing tax has been either passed on or passed back by the plaintiff, then the plaintiff cannot maintain any action to recover the tax, if it is ultimately determined to be invalid, either for its own account or for the account of the persons to whom the processing tax has been thus passed on or passed back by the plaintiff; nor can the persons to whom the processing tax has been thus passed on or passed back maintain such an action on their own account, but all right of action by anyone to recover the tax, if it has been passed on or passed back, has been wholly taken away by said amendments to said Agricultural Adjustment Act. Moreover, Section 21(a) of said Act and Section 405 of the Revenue Act of 1935 deprive the courts of power to render declaratory judgments with respect to such alleged taxes. By reason of the impossibilities of proof hereinabove referred to, the practical effect of said Acts will be to deny taxpayers all means of securing a judicial decision as to the constitutionality of the processing taxes, unless this court grants the relief herein sought.

IX.

Plaintiff's food products processed from hogs have been and are sold in close and active competition with foods not subject directly or indirectly to a processing

tax. The necessary result has been and is to greatly restrict, narrow and limit the market for plaintiff's products as compared with the available market if no processing tax had existed, and to alienate both past and prospective purchasers of plaintiff's products processed from hogs, and to greatly decrease and limit plaintiff's trade and profit possibilities, and the collection and enforcement of said unconstitutional and invalid tax is thus detrimental and prejudicial to plaintiff even though the tax or some portion thereof may be ultimately refunded.

X.

That if said plaintiff does not pay said illegal taxes, or any thereof, and injunctive relief be not afforded it herein, then under said Agricultural Adjustment Act and the Revenue laws of the United States, including the regulations promulgated by the Secretary of the Treasury, said Collector, his deputies and agents, may and will levy upon, distrain, seize and sell the plant, stock on hand, merchandise and other property of plaintiff in collection of such unpaid taxes; and every such distraint and seizure will result in a separate and different trespass against plaintiff's property, and will constitute various and different breaches of the peace; that plaintiff has been advised by its counsel and believes and therefore avers that said defendant Collector, his deputies and agents, so engaging in said various trespasses are and will be, and each of them is and will be, wholly unable to answer to plaintiff for the injury and damage thus occasioned plaintiff; and that by reason of such distraint, seizure and sale of plaintiff's property, its said property and the good will of its said business will be rendered of no value and render plaintiff unable to recover its aforesaid loss and damage, thus taking the property of

plaintiff without due process of law, and result in a multiplicity of suits, and deny to plaintiff a plain, speedy, adequate and complete remedy at law.

XI.

To require plaintiff to pay said invalid and unlawful processing tax without affording it an adequate remedy at law for the recovery thereof, and at the same time to forbid that any suit shall be maintained to enjoin the collection of such processing taxes will result in taking plaintiff's property for private use and without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

XII.

Plaintiff has been advised by its counsel and verily believes and therefore avers that the said Agricultural Adjustment Act, as amended, violates the Constitution in the particulars hereinbefore set forth. It is challenging the constitutionality of said Act and the legality of the processing taxes imposed thereby in good faith. The imposition against plaintiff of the penalties provided by law for failure to pay said taxes, including the alleged interest of 1 per cent a month (Revenue Act of 1926, Sec. 626, 47 Stat. 69) during the pendency of this litigation, which is brought to test the constitutionality of said Act and the legality of the taxes imposed thereby, would deprive the plaintiff of its property without due process of law even if the plaintiff's claims in this action should ultimately be held to be unfounded.

XIII.

Plaintiff has no plain, adequate and complete remedy at law in the premises in that there is no appropriation of funds by Congress now available, or now provided to be available in the future, sufficient in amount to permit the refund to the plaintiff and other processors, of processing taxes in the event such taxes should hereafter be paid and said Agricultural Adjustment Act as amended is and shall be declared invalid. While said Act as amended purports to appropriate money for the purpose, among others, of making refunds of processing taxes paid, the amount of the appropriation available for that purpose is only that portion of the taxes collected under said Act which is not otherwise expended for rental and benefit payments, payments authorized to be made under section 8 of the Agricultural Adjustment Act as amended and administrative expenses.

XIV.

That the so-called remedy at law afforded plaintiff by the Act is dubious, unfounded and uncertain, and the uncertainty respecting the ability of plaintiff to satisfy its claim for refund if it attempts to pursue any remedy at law given it, entitles plaintiff to injunctive relief herein.

XV.

That said plaintiff has paid into court all processing taxes heretofore becoming due and payable by plaintiff under said Act, in conformity with the Court's order in that respect made herein, and if required by said Court will continue to pay into Court, and hereby offers to pay into said Court all other processing taxes payable by it at the time and as often as such taxes become due and payable by plaintiff; and that such taxes so paid into said

Court by plaintiff are to be paid to the Collector of said Sixth District of California if and when it is finally determined that the collection of said taxes from said plaintiff is not illegal and unconstitutional.

XVI.

That the purported taxes on account of hogs processed by plaintiff during the months subsequent to July and August, 1935, will fall due and become payable from time to time during the pendency of this action, and each and all of the allegations hereof with respect to the taxes payable by plaintiff on account of hogs heretofore processed by plaintiff are and will be equally applicable to the taxes payable by plaintiff on account of hogs heretofore processed by plaintiff; and unless plaintiff pays the said taxes for hogs processed in subsequent months monthly as they become due under the terms of said Agricultural Adjustment Act as amended, said defendant Collector will proceed to enforce collection of the same in the manner hereinbefore set forth and plaintiff will be subjected to the same consequences of failure to pay such taxes as are herein alleged and set forth with respect to the taxes on account of hogs heretofore processed by plaintiff, all of which will result in a multiplicity of civil actions and criminal prosecutions, to the great and irreparable injury of the plaintiff and to its business in the same manner and to the same extent set forth in said original bill of complaint, etc., and as hereinbefore set forth with respect to said taxes on account of hogs heretofore processed by plaintiff.

WHEREFORE, plaintiff prays:

First: That it may have all the relief prayed for in its original Bill of Complaint and Petition for Declaratory Judgment and Injunction on file herein;

Second: That a temporary restraining order may be issued against the defendant, Nat Rogan, and each of his officers, agents, attorneys and deputies, restraining them from collecting or attempting to collect said taxes from the plaintiff, whether now due and payable or hereafter to become due and payable under said Act and the amendments thereto, and whether by distraint, levy, posting of notices of liens, jeopardy assessment, or in any other manner, pending hearing on the prayer for a temporary injunction;

Third: That the defendant, Nat Rogan, and each of his officers, agents, attorneys and deputies, be enjoined temporarily until final hearing and permanently thereafter from collecting or attempting to collect in any manner from the plaintiff said taxes;

Fourth: That this Court declare said amendments to said Agricultural Adjustment Act and said Act as amended are unconstitutional and unenforceable, and that the said processing taxes are illegal and unconstitutional in the respects and for the reasons in said original bill of complaint, etc., and herein alleged and shown, and that the collection thereof from plaintiff would be violative of its constitutional rights;

Fifth: And for such other and further relief as to justice and equity may pertain, and for its costs.

JOSEPH SMITH and
GEORGE M. BRESLIN

Attorneys for Plaintiff.

STATE OF CALIFORNIA,)
) ss.
COUNTY OF LOS ANGELES.)

T. P. BRESLIN being first duly sworn according to law deposes and says: That he is the president of the Standard Packing Company, a corporation, the plaintiff named in the foregoing supplement to bill of complaint and petition for declaratory judgment and injunction; that he has read said supplement to bill of complaint and petition for declaratory judgment and injunction and knows the contents thereof, and that the statements made therein are true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters that he believes it to be true; and that he is authorized to make and does make this verification for and on behalf of said corporation.

T. P. BRESLIN

Subscribed and sworn to before me this 12th day of September, 1935.

(Notarial Seal) G. STUART SILLIMAN
Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Filed Sept 12 1935 R. S. Zimmerman,
Clerk By B. B. Hansen Deputy Clerk.

